

This volume belongs to *Robert Atkinson*
~~Thayer, J.~~

VOL. pp. 1040 - 1153

Before Thayer, J.

COMMONWEALTH

v.

SACCO and VANZETTI.

Arguments on Fifth Motion

INDEX Dedham, Mass., Nov. 6, 7, 8, 1923

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Massachusetts Superior Court

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they ARGUMENT IN REBUTTAL by Wm. G. Thompson, Esq., your

Honor FIFTH MOTION. If they had imagined your Honor had mis-

stated it on that vital point, the testimony of that witness,

they would have excepted instantly or called your Honor's attention to it.

Mr. THOMPSON. Shall I proceed, your Honor?

The COURT. If you please.

There were only two men in this court room that knew

Mr. THOMPSON. I am very sorry to have to take up your Honor was mistaken, the district attorney and his assistant, and they did not call your Honor's attention to it. I have said, this Proctor matter. I should have been glad if I am very sorry to have to say that thing, but I am not going it could have been freed from any personal significance, but to minor matters at all.

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If that situation goes to the Supreme Court of Massachusetts and since Mr. Williams and Mr. Katzmann have, both I think settle, there can be only one result. You can't take men's have ---

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The COURT. I understand the charge very well, indeed. use to sophisticate and argue around it. You may talk about You read it to me day before yesterday.

The word "consistent" all day long and never can get rid of

Mr. THOMPSON. They agree on the word "effect" in the that case.

sense in which your Honor did not use it in your charge.

It is idle to talk about Mr. Moore and Mr. McAnarney

I want to call your Honor's attention once more to the precise understanding that that is what Capt. Proctor meant. They language you used in your charge. (Reading.)

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Mr. THOMPSON. Shall I proceed, Your Honor?

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Mr. THOMPSON. I am very sorry to have to take up

again, and very briefly, without any repetition of what I have said, this Proctor matter. I should have been glad if it could have been freed from any personal significance, but it is impossible to do so. Your Honor charged this jury, and since Mr. Williams and Mr. Katemann have, both I think

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The COURT. I understand the charge very well, indeed.

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There were only two men in this court room that knew your Honor was mistaken, the district attorney and his assistant, and they did not call your Honor's attention to it. I am very sorry to have to say that thing, but I am not going to mince matters at all.

If that situation goes to the Supreme Court of Massachusetts, there can be only one result. You can't take men's lives away in that way. That cannot be done. There is no use to sophisticate and argue around it. You may talk about the word "consistent" all day long and never can get rid of that claim.

It is idle to talk about Mr. Moore and Mr. McAnarney understanding that that is what Capt. Proctor meant. They would have cross-examined him in a moment if they had supposed he would say as he now says, "There isn't -- I found not the slightest evidence, any affirmative evidence whatever that this so-called mortal bullet passed through that pistol."

That is the question he was asked. "Did that bullet pass through that pistol, the pistol in evidence?" not through some pistol, not through some Colt pistol. That wasn't what he was put on to prove. It is idle to talk about that. He wasn't there as an expert to prove it passed through a Colt pistol. He was offered as an expert to prove it passed

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through this Colt pistol, and he gave an answer which your Honor understood as meaning he could furnish evidence on that point. He says he hadn't any evidence to warrant the belief it did, not a scintilla of affirmative evidence. Of course, the inference is clear that not having any evidence to show it did, he must have believed it didn't.

He was put there for the express purpose of proving this particular bullet went through that particular of the pistol. That is the question put to him, the pistol in evidence. You can't get around it, you can't get out of it in any possible way. There is no possible way of exception sophistication to get out of that. "Consequently he put to me this question: 'Have you an opinion as to whether bullet No. 3 was fired from the Colt automatic which is in evidence?' 'Not from some Colt automatic, and he gave that answer. 'Yes.' 'What is

Do you suppose if Mr. McAnarney and Mr. Moore had understood he meant he had not found any evidence at all it passed through that pistol they would not have asked him for that? What is the explanation that they didn't? That he was holding something back, and that if they questioned him further, they would get it even worse, and under all the accepted rules of cross-examination, under that question, they let him alone; and that that was the understanding, and that that was the impression that prevailed at the time, is proved, is perfectly obvious by what your Honor said in your charge that I have just read. THOMPSON. They deny it here in their statements.

I say ordinarily no exception line on a motion for a new trial to any error committed that an exception could

through this Colt pistol, and he gave an answer which your Honor understood as meaning he could furnish evidence on that point. He says he hadn't any evidence to warrant the belief it did, not a scintilla of affirmative evidence. Of course, the inference is clear that not having any evidence to show it did, he must have believed it didn't. He was put there for the express purpose of proving

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I say ordinarily no exception in on a motion for a new trial to any error committed that an exception could

have been taken to at the trial. But this is the unique case which could not, because the parties that ought to have excepted did not know it and neither did your Honor know it, and that is proven by the affidavit itself.

You have got the exceptional case here, where error committed -- and it was an error, an unwitting error -- a direct charge on the facts, committed at the trial which could not be taken exception to at the trial because of the way it was done, and because the parties were not aware and cannot be reasonably held to have been aware of what was going on, and when it is discovered, of course exception will lie to that thing. I cannot imagine your Honor permitting a thing like that to happen and sending such a thing as that up to the Supreme Court of Massachusetts.

The COURT. Was there anything doubtful or ambiguous about that question, "Have you an opinion?" "Yes." "What is it?"

Mr. THOMPSON. "What is it?" "It is consistent with being fired through that." Nothing ambiguous about the question, your Honor.

The COURT. No.

Mr. THOMPSON. There is about the answer.

The COURT. Do you claim then that was by pre-arrangement?

Mr. THOMPSON. That is what the witness says, and they do not deny it in their affidavit.

The COURT. In other words, he ----

Mr. THOMPSON. They deny it here in their statements.

The COURT. Let me see if I follow you correctly. In other words, that he went upon the witness stand by agreement

There is a great deal of evidence to show that the
 law is not a perfect one, and that it is not
 always applied in a fair and equitable manner.
 It is true that the law is not perfect, but it is
 the best we have, and it is the only one that
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or by compromise or pre-arrangement, and testified to one thing when it was contrary to his judgment and belief? Is that it?

Mr. THOMPSON. That is not, in my judgment, your Honor, an accurate way to put it if you want my answer about it. My claim is -- I insist upon having my claim put my own way, as I have put it in my brief and I put it in my argument and as I put it now -- it isn't denied that before they put him on they had asked him whether he found any evidence. Mr. Williams admits that in his affidavit, and admits it again here. Of course they did. Whether he found any evidence, any reasonable belief, any reason for an opinion as an expert that that bullet went through that gun, not whether it went through some Colt gun, but whether it went through that gun; and that he told them he hadn't any. That is not denied. It is denied that he was "repeatedly" asked to give that evidence; but it is not denied he was at least once asked that question, and it could not be successfully denied, unless counsel were willing to set themselves down as totally incompetent to prepare a case at all, which we know they are not.

He then says that that question was framed because he could not give them the evidence, any affirmative evidence whatever on the point they wished him to give evidence on, namely, that bullet went through that man's gun; that that question was framed accordingly, he says, in consequence thereof.

That particular question was put, "Have you an opinion?" "What is it?" and that that answer, that particular answer was

given accordingly in consequence of the dilemma they found themselves in, having given him the exhibits to examine, having made him their witness by giving him the exhibits, which was well known, of course, and by having him prepare their case they couldn't leave him off.

"Accordingly" is his word, "in consequence of that that question was framed, those two questions were framed and that answer was given." Now, then, I say, and he says "Had the question that was put to me and which I could not answer favorably to the Government, been put to me on the stand, 'Have you an opinion, any evidence that bullet went through?' I should have said then as I say now unhesitatingly 'No.'"

Now, he gave an answer "It is consistent." That answer, of course, examined lexicographically by the aid of an English dictionary, a Century dictionary, the ambiguity might not be as great as it appears in ordinary speech. In ordinary speech your Honor has heard the word used time and again by doctors. Talk about doctors here on the stand,-- they think it is consistent, when they mean, "Yes, I think it is, it is consistent with it." It is a loose expression in common speech, used and often intended to mean "Yes. "I do think it went through that gun." That is what you understood it to mean or you wouldn't have charged the jury that he said so. And that is what my brothers Moore and the others understood it to mean, or they would have cross-examined him and found out the facts.

Have I answered your Honor's question as to my view?

The COURT. Let me ask you this question. As I get it on the argument and affidavits, that Capt. Proctor found

no evidence whatever that this bullet was fired through the Sacco gun?

Mr. THOMPSON. After trying, he did not find it.

The COURT. After the trial?

Mr. THOMPSON. No, after endeavoring to find it, he did not find it.

The COURT. Yes, so at the time he went on the witness stand, he had no evidence whatever, and it was his belief that it was not fired through the Sacco gun?

Mr. THOMPSON. Now, then, he had not stated in so many words in his affidavit that it was his belief it was not fired, but I say that is a necessary inference if a man in his own affidavit says that he finds no evidence whatever a thing is true, it is probably his belief it isn't true.

The COURT. Now, if Capt. Proctor, by pre-arrangement, went onto the witness stand, knowing that that bullet had not been fired through the Sacco gun ---

Mr. THOMPSON. He could not know the fact; nobody could know it.

The COURT. Well, agreeing ---

Mr. THOMPSON. Believing.

The COURT. Believing.

Mr. THOMPSON. Believing.

The COURT. And he went onto the witness stand, and told that jury that it was consistent with being fired through the Sacco gun, was that perjury?

Mr. THOMPSON. I would rather have your Honor, before I answer that question get that Captain -- as I have repeatedly urged you and I think it is serious enough to do it -- and

an evidence whatever that this police was tried corrupt

The second part

Mr. Thompson. After that, he did not

the 20th. After the 20th

Mr. Thompson. No, after the 20th is that it, the 20th

not the 20th

The court. Yes, at the time he was on the witness

stand, he was an evidence witness, and he was not tried that

it was not that through the second trial

Mr. Thompson. Yes, then, he was not tried in the court

There is also evidence that it was the 20th that he was tried

but I say that is a statement of fact if a man is in the

evidence says that he was in evidence witness a thing is

that, it is evidence that he was in evidence

The court. Yes, it is evidence, it is evidence

and also the witness stand, and the fact that he was

that fact is evidence the second part --

Mr. Thompson. He was not tried the 20th, he was

from it.

The court. Yes, it is evidence --

Mr. Thompson. It is evidence.

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that fact that it was evidence that he was

that fact, and that is evidence

Mr. Thompson. I would not say that, but I

would say that it is evidence that he was

that fact that it is evidence that he was

ask him to come right out here and explain to your Honor what he meant by giving such testimony when two men's lives were at stake.

The COURT. I am not inclined -- I have read that over with a good deal of care. I have read it over repeatedly, and I have listened to your argument also with great interest. I do not think it is for me to call Capt. Proctor out here as a witness.

Mr. THOMPSON. Is it for me, sir? If it is, I will do so so quickly he will be out here inside of an hour, if he is in Boston. This case is being tried on affidavits. There is nothing I would like so much as to have Capt. Proctor come out.

The COURT. You stated at the outset, Mr. Thompson, there was some understanding that there were to be no witnesses, that the cases were all to be tried on affidavit. While I did not say that that was not the fact, I have made no such agreement to that effect.

Mr. THOMPSON. If your Honor would give me -- if your Honor will say ---

The COURT. (Continuing.) As I recall it.

Mr. THOMPSON. If your Honor will say you will hear him when he comes here, I will have him here.

The COURT. I have not declined to hear anybody.

Mr. THOMPSON. I know that your Honor is very willing to give -- I am not speaking about the general right to a hearing, but only whether this particular man will receive a hearing from your Honor. Of course, we understand everybody has a right to a hearing.

The COURT. It is not for me to pass upon that. It

is not before me now.

Mr. THOMPSON. I should think, if your Honor please, to be perfectly frank about this matter, I should think that in view of his affidavit, it might possibly occur to the government that they better call him out here. That would have occurred to me, I think, although I can't claim to be as astute in such matters as the government.

It seems to me that when a man, holding an official position in this state for 36 years, with an office in the Boston state house, makes an affidavit like that -- I have not gone off the record, and my brother Williams has gone off the record. He has gone off twice. Just told about Mr. Katzmann in another case, which I don't deny and don't doubt. He has told also how something did or did not occur in the district attorney's office, which he hasn't seen fit to deny in his affidavit. I noticed two cases when he went outside of what he had a right to argue. I don't know as I blame him very much for doing it, but I will tell you this, if your Honor please, if I should go off the record and tell all that Capt. Proctor told me, I could make some more startling statements than any Mr. Williams has made off the record. I wish your Honor would get him on it -- not only what he told about not finding evidence, but what he told them about the merits of the case and who did commit this murder.

The COURT. I am not going to summons him out here. It might be unfortunate.

Mr. THOMPSON. It won't be unfortunate for these defendants to have him here.

is not better than now.

Dr. Thompson. I should think, if your report shows

to be generally true about this matter, I should think

that it will be the intention, if they possibly can

to the government that they have called this one.

What would have amounted to no, I think, although I don't

claim to be an expert in such matters or the government.

It seems to me that when a man, having an official

position in the state for 20 years, with an office in

the house, where he is elected, and an official life, and

and goes off the house, and up to the house, and

all the time. He has been off since. What would

about it. I believe in another case, which I don't say and

don't say. He has told me the government is not

even in the state's attorney's office, which is not

even in the state's attorney's office. I believe the case

even in the state's attorney's office. I believe the case

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I don't know as I think the very word the word is, but

will tell you that, it was some place. It is not

all the same and all that. I don't say. I

would not say some thing. I don't say. I

William has made the report. I don't know what

you think of it. I don't say. I don't say. I

estimate, but what he says about the matter of the

case and the case is not correct.

The clerk. I am not going to answer the question.

It might be interesting.

Dr. Thompson. I don't know what the case is.

He has said that.

The COURT. It might be unfortunate if he puts the same interpretation on his language that you do?

Mr. THOMPSON. I do not think Capt. Proctor will be influenced by any fear of the consequences for the reason that he knows the pressure he was under when he made that statement. He will take his chances with men whom he would regard as good deal better men than himself.

The COURT. You may proceed with your argument.

Mr. THOMPSON. I should be very glad to know if I do get him here this afternoon he will be heard. I should like to have him here himself and have your Honor question him. And I really think it is only fair that I should seek your Honor's advice on that, expecting to get some intimation or opinion as to what would happen if he were here. I supposed the government would have him here. I really thought they would not hesitate for a moment to have their own witness out here and explain what he did mean, a state official, in the same general business they are in, but they have not seen fit to do it.

The COURT. You have a right to argue that fact.

Mr. THOMPSON. Yes, I have got a right to argue it, and I do argue it, but I am anxious above all things not to make a technical argument here but to see that justice is done to these men, and I want all the benefit that can be derived from any source given to these men, and if they are going to be helped by that thing more than they are by my argument, I want them to be helped by it.

I expect it would,-- I can't tell, the difficulty is I do not know how such transactions as this appeal to your

The Court. It might be suggested that the

same investigation of the language that had

been conducted. I do not think that. I think it will be

inadequately and that of the circumstances of the case

that is more the evidence in the case than the fact

statement. It will take the evidence into account as well

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The Court. I do not think it is your statement

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you are perhaps for a moment to have him hear himself

and I am sure that he did hear. I think that

some general business that was in, but I think that

is the fact.

The Court. You have a right to hear that fact.

Mr. Thompson. Yes, I have a right to hear it, and

I do agree it, but I am sure that all things are

a technical statement that is to be heard. I think

that is, and I want all the facts that are in the case

and I am sure that the fact that the fact that

helped by the fact that I am sure that the fact that

was then to be heard in it.

I agree it is, and I want all the facts that are in the case

I do not know how much time it will take to hear

Honor. I do not know what view you may take of such a transaction as this. I don't use it as the basis for making any general, sweeping attack upon these gentlemen, not for a minute, or any self-righteous suggestion that I am any better than they are or anything of that kind. I do not want to be understood that way. But I say men make mistakes occasionally in the zeal of their labors when they are trying to convict people, especially unpopular men like these men with very few friends, with a community at the outset solidly against them, most men in the community glad to have them convicted whether they were guilty or not, because of their opinions.

Now, the tide has turned. Popular opinion is not that way now. It was that way, and I can imagine the same pressure might have been put upon my brothers here that was put upon Capt. Proctor. I am not making it a personal matter. I am simply saying these things happened. They are not denied. I call your Honor's attention to the Williams affidavit again. It cannot be too often read, in which he states he did ask Capt. Proctor.

The COURT. Let me ask you this question, because it is only fair. Suppose, according to your contention, that this was all by pre-arrangement, the district attorney and his assistant knowing that that was not Capt. Proctor's opinion, but they procured him to go onto the witness stand and to testify as he did, why were they not equally guilty of procuring false testimony to be given under oath?

Mr. THOMPSON. Simply because the testimony was ambiguous, had a double meaning, and there is a technical

escape. You can't say, when an English word may mean one of two things it is. I do not even like to discuss such a question as this. We have not raised it, but your Honor has raised it. You have asked me a question and I am bound as a lawyer to reply to it. My reply would be that where you are dealing in ambiguities, you say good-bye to perjury. It is the most remarkable,-- I do not know as I ever saw -- I know that I never have read or heard of a transaction like this particular transaction.

In one sense, in one sense the Captain's answer was perfectly true. In another sense it was false. I mean, it did not represent his inner belief. He was stating in words what was not his real belief. He was called to testify to belief. He was called as an expert. He wasn't testifying to matters of fact within his own knowledge. He was called to give an opinion.

Now, he used words to express his opinion that might mean one of two things, either "I think the bullet did go through that gun," or "it might have gone through that gun." One or the other of those two things. If he had said it might have gone through the gun, which is exactly equivalent to its being consistent with going through, your Honor would have struck it out. "Might have been" would not be any evidence at all. He was asked about this particular gun, not some gun. "It might have." It would have gone out, and there would have been a cross-examination at once. It would have caused suspicion on the part of Mr. Moore. He would have said, "What do you mean, Captain? As a matter of fact, you do not believe it did go through.

"Do you believe it did go through?" He would have said, "No, I don't" or "I can't find any evidence it had gone through." That would have helped these defendants extremely.

But he used an expression which, while it might, while it was capable of meaning "It might have gone through," it also was capable of meaning "I think it did go through." And that is what he was understood to mean. That is why -- by your Honor and by Mr. Moore and by the McAnarneys -- that is why they did not cross-examine him and get the benefit of his real opinion, which would have been of extreme value to them if they had realized that was his opinion, extreme value.

That is why, when your Honor charged the jury "to that effect, namely that it went through that gun, two witnesses testified," that is why Mr. McAnarney did not jump right up and say "I except, your Honor. He never said any such thing." It was because he believed your Honor was stating it correctly. That is the whole story.

Men are guaranteed in this Commonwealth a fair, impartial trial, as fair as the lot of humanity will permit, a fair trial. After you get by all the technical rules of law, you come down ultimately to the question whether these men had a fair trial; and did that little incident and transaction promote fairness in dealing with these men or did it promote unfairness? There cannot be more than one answer to it.

Mr. Katzmann's argument, if I may be allowed to say so, is perfectly sophistical, a piece of sophistry. You have to face the fact that on their own admission made here in open court and made in the affidavit of Mr. Williams, he

knew that Capt. Proctor, called as an expert to give an opinion whether that bullet went through that gun, would say if he were asked a question that would bring out his true opinion, that couldn't bring out anything else, a question framed so as prevent him from any ambiguity, would say "I have found no evidence whatever that it did, no ground for believing that it did," they knew about it and nobody else knew it.

They put that question. It is evident they talked it over. They do not deny they talked to him once. He says "repeatedly." You can take -- there was some talk about putting him the real question, which was, "Do you believe it went through that gun? Have you found any reason to believe it, any evidence to believe it?" That was talked over. They say it was. They asked him once, they say. He says "repeatedly." You can judge.

Mr. Williams says he thinks in his affidavit -- even stronger than he now says -- Capt. Proctor himself framed the question. It isn't customary for witnesses to frame questions.

The COURT. Let me ask you one more question, please.

Mr. THOMPSON. Yes.

The COURT. Which has been on my mind. When Capt. Proctor was asked "What is your opinion?" "First, you have an opinion?" "Yes." "Was the mortal bullet fired through the Sacco pistol?" Why couldn't he then have said "No."

Mr. THOMPSON. Well, because, I suppose, your Honor, he did have an opinion and it was that it was not fired through the mortal pistol. That is the reason he couldn't say "No."

And he contrived, he contrived to put into an affirmative sentence that it was consistent, and here is where he came very close to the line. If in fact -- "if" I say -- he not only believed there was no reason to think it went through but that there was some reason to think it did not, then I am afraid he passed over the line of truthfulness. I can't deny it.

The COURT. That is what I was thinking over.

Mr. THOMPSON. I am afraid you can't get around it.

The COURT. All right. You may proceed.

Mr. THOMPSON. All I can say about it is I hope your Honor will interpret those three affidavits reasonably. I hope you will give them the same reasonable interpretation that you would regardless of the consequences. In my request for rulings I have not made any violent attacks on these gentlemen. I have simply said if that conduct occurred, it deprived these defendants of a fair trial; I have asked for their sakes that redress be given, not in any other way, not for any detriment to my brothers at all. I do not feel like getting very much excited about this Proctor thing, because it is more painful than exciting, it seems to me, and I haven't heard any explanations that have made it any better.

Now, Mr. Williams, running through my notes here, Mr. Williams says Proctor told Van Amburg he did not believe -- as I understood him -- in the significance of deep cuts. What he says is scratches, that he talked over with Van Amburg repeatedly the scratches that Van Amburg says were significant. That is what he does say, and what he has

said from beginning to end, that he found them wholly unconvincing.

He does not say in so many words "I was told in the conversations that I had with him -- I used the words wholly unconvincing." But he said "I talked it over often with him, these scratches made by rust marks on the barrel, and I found his claim wholly unconvincing." It isn't a very wild or violent inference that he told Capt. Van Amburg that. If he talked about it, I suppose he told him his true opinion. "You are not right, Captain. Those don't convince me at all. I do not think there is anything in them."

If I ventured to say in my argument, if in the heat of my argument I was carried away to say that Capt. Proctor said in so many words that in these repeated conversations he used the words, "Capt. Van Amburg, your proofs are unconvincing," I withdraw the statement. He does not so state, but I say it is an almost unavoidable inference that that is what he did say in substance to Capt. Van Amburg, because he could not talk over something which Van Amburg claimed to be convincing, and he found wholly unconvincing, without expressing the opinion to Capt. Van Amburg.

If he was going to talk at all, he would tell him what he thought, which was, "I do not think you are convincing. These things do not impress me, Captain." If you think that is too strenuous an inference, I withdraw it. I can't escape it myself. I do not believe Capt. Proctor could have talked over those things with Van Amburg about Van Amburg's argument and never told him he thought his arguments

were not convincing, and never expressed any doubt about them.

If that is the best that can be said -- with such attacks on me -- if that is the best that can be said in reply to this thing, I should not think your Honor would spend much time on it. It seems to me the proper course to pursue would be to either grant a new trial at once either on Ripley or on this part of this motion, and let the rest remain undecided, and that would not prejudice the government on a new trial, if you were to decide this motion sweepingly, as I think it ought to be, if the Proctor part doesn't go.

I propose to show your Honor, before I get through, most of these exhibitions of Mr. Williams here are absolutely fallacious and misleading for one reason, although extremely ingenious, and I must confess great admiration for the cleverness with which he used the mechanical features, but I think you will find they are not reliable.

With the use of a microscope as he suggests, you will find, looking at the pistol when it is cocked -- by the way not when it is ^{not} cocked -- when it is cocked it is just as rigid and you can't move the breech block a fraction of an inch. He had it always uncocked. Little things like that vitiate his argument; and my impression is the satisfactory manner of dealing with this whole situation would be to grant a new trial, either on the Ripley or on this Proctor part of this, and not furnish the next trial, not furnish the evidence which would be seriously furnished against the government if you should put it, as I think you ought

was not intended, and never intended to be so.

It was in the first part of the year --

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to, if you do not decide it on the Proctor ground but decide it on its merits, because it would almost end the government's case if that were decided on its merits. I think in saying that, I am pretty/^{liberal}with the government, too.

I do not think it is asking very much, but I am going to argue that motion ought to be decided on its merits. I merely suggest that the method I have indicated of handling it would be as fair and impartial a way of dealing with the situation and with as little possible detriment to everybody concerned as could be devised.

I did not say anything about deep cuts in my discussion of Capt. Proctor's affidavit. The words he used were "scratches". I do not think Capt. Van Amburg or anybody else had in mind at the time the significance of this one cut on the mortal and two or three on the other, which were discovered by Mr. Hamilton, after he had examined the Burns bullets, which he did not get until quite late, after he made his original affidavit.

Now, Mr. Williams has seen fit to almost ridicule Capt. Proctor, an old man, with poor eye sight, he only testified to the type of pistol, but I regret that that was not so. What they asked him was, "Do you think, Captain,-- have you an opinion whether it went through, not the type of pistol known as a Colt automatic pistol, but this particular pistol?" I won't say that statement made by Mr. Williams is untrue; but it don't correspond to the facts..

He says he was ignorant, he was an ignorant man, ignorant of the makes of the pistol. He was a pitiful man, and your Honor had to take pity on him; and then he says he was a necessary cog in showing that it came through a Colt automatic. I am sorry that they had to pick an ignorant man with poor

to, it was not decided at the time of the meeting that the
 it was the matter, because it was not clear that the government
 came to that point, and it was not decided at the time.
 (1944)
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eye sight, whom the Court had to take pity on, to prove such a simple proposition that this bullet went through some Colt automatic,-- more or less disputed by the defendants, but not much, at the trial, either a Bayard or Colt, especially when they have such a man as Capt. Van Amburg at their command. They could have got all the Colt people if they wanted, could have got the foreman of the firm. They had ample means and ample money. It is too bad they had to rely on this old man with poor eye-sight to be a necessary link in their case.

But having relied on him only for that purpose, as they now claim, to show it was through some Colt, which is a little different, they went further and asked the question whether he had an opinion whether it passed through this particular pistol it has taken us a week now to discuss and which it took Van Amburg many hours, as I remember, to discuss.

They did not think he was too weak to ask that question. They did not think at the trial his eye-sight was so poor and his mental state so enfeebled that he could not answer the question, because they put it to him. If he was so ignorant, why was this kind of man put in charge? Why did they give him the exhibits to examine and let him work on them two or three weeks or a month, I don't know which? Why did they call him and why did they talk with him in their own office and he told them facts they now admit,-- he found no evidence the bullet went through that gun, but they say he pushed it through other guns, and I presume, pushed it through the Sacco gun. That is what I always understood he did.

Why didn't they leave him off the stand then?

It is perfectly obvious why they didn't. The reason was because it is the first step that counts. When you get a man in and it becomes known a certain man has examined your exhibits, getting ready to prepare himself to be your expert and then you do not produce him,-- your Honor has seen that situation prevail in many a tort case.

The plaintiff has put on one doctor, but left out the family physician or something, and if you leave out the family physician, if you leave out the man you first go to when you are in trouble and don't call him, even a tyro at this profession knows enough to call him himself. I could guarantee my brothers McAnarney and Moore would have had a summons immediately served on Capt. Proctor if at the close of the government's case he had not appeared as a witness for them. That is the reason they called him. They had to.

Why did they call him? Why didn't they leave him off? Why didn't Mr. Katzmman at that time, with his characteristic generosity -- and I don't doubt his characteristic generosity in most cases when he is not dealing with Italians and Socialists; I don't doubt he would go to the limit to be fair in other cases -- why didn't he then say, "We have here a witness, Mr. McAnarney, that we cannot use, Capt. Proctor. I can't get him to say there is any evidence that bullet went through that gun. It is only fair you should have him. I don't think much of him compared with some people, such as Van Amburg. He isn't as good as Van Amburg, he is an old man, his eye-sight is poor, but I think he has formed an opinion adverse to me." Why didn't he say, "You

My dear Mr. Secretary, I have the honor to acknowledge the receipt of your letter of the 10th inst.

in relation to the proposed extension of the term of office of the members of the Board of Directors of the National Bank of Commerce, and in reply to inform you that the Board has decided to extend the term of office of the members of the Board for a period of one year, and that the same has been approved by the stockholders of the bank.

The Board has also decided to extend the term of office of the members of the Board for a period of one year, and that the same has been approved by the stockholders of the bank.

I am, Sir, very respectfully,
Your obedient servant,
J. M. Smith, Secretary.

I am, Sir, very respectfully,
Your obedient servant,
J. M. Smith, Secretary.

I am, Sir, very respectfully,
Your obedient servant,
J. M. Smith, Secretary.

I am, Sir, very respectfully,
Your obedient servant,
J. M. Smith, Secretary.

take him and use him if you want to and put him on the stand?" Why didn't you say it, if you wanted to be perfectly fair? If you had, then this whole trouble would have been over. You didn't.

Why, when he heard your Honor tell that jury that -- that is the vital bite of this thing -- when he heard your Honor say "to that effect two witnesses have been called, namely, to the effect that bullet went through that gun," and he knew very well and he doesn't deny it now and nobody has denied it that wasn't the opinion of Capt. Proctor. Capt. Proctor was being cited by your Honor in your official capacity for that opinion, used as authority for it.

If he wanted to be as fair then as if I was on trial for murder or some one of his own people, some of his own crowd, why didn't he stand up and say, "I am very sorry, I can't allow that to pass. I happen to know myself that the Captain never meant by his statement 'it was consistent' what you think it meant,"-and what evidently my brothers thought he meant or else they would have cross-examined-- "he never meant that. What he said was 'It is consistent.' He merely meant it was fired through some Colt pistol. I think it is only fair to tell your Honor that in view of the fact these men are on trial for their lives."

Why didn't he say that? That would have ended the whole matter. I don't see how you can get around it, really. It don't seem to me possible to escape the proposition that by that silence, by that last moment silence, when he ought to speak, and permitting the Captain to give an answer to a question they say suggested by the Captain -- the Captain says

suggested by them -- and the answer also pre-arranged, the Captain -- the plain inference from the Captain's affidavit is that whole thing was pre-arranged and to cover up, to cover up the fact the Captain couldn't find any evidence that bullet went through that gun. That is all there is to it.

That is not an English fair trial, and it ought not to be handed out to Italians any more than it would be to one of us if we were on trial.

Well, Mr. Williams in his final remarks made a certain statement, which I want to take up now before going into the minutae of this case. He said that Davis against the Elevated Railroad was an authority against the defendants here. I have cited it as an authority in their favor. My impression is I know what it decides. I spent a good many weeks in writing a brief on it and arguing the case to the Supreme Court.

What it decided was that evidence which Judge Irwin said was cumulative was not cumulative. That decided absolutely point blank -- that evidence was evidence of an ex-ray picture as contrasted with oral testimony and the testimony of doctors as to what was in the man's eye.

Doctors had testified they looked in and saw this, that and the other, and the man -- Elevated witnesses had testified that no fuse blew out but a cartridge did explode -- and the man said he felt something in his eye and it was a piece of fuse. No evidence of ex-ray was put in at the trial. There was a lot of evidence as to what was in his eye. In fact the trial raged out here for, -- I think it was tried out here for 10 days, pro and con. Doctors and women and men and all testifying what was in the plaintiff's eye, and he himself

throwing what light he could on it with his one remaining eye; and then along came this new evidence of ex-ray.

The Court says that is evidence of a different kind. Judge Irwin had a somewhat amazing impression that any evidence which tended to prove any proposition in issue in the case was cumulative, and if it did not tend to prove some proposition in the case would be irrelevant, so he practically barred out that newly discovered evidence by that rule.

The Court drew the distinction any evidence of a different kind or the same kind must be to some point raised in the trial or else it would be irrelevant anyway. The Court was not inclined to draw the line sharply between one line and another; if it was along the same line it could fairly be called cumulative.

But I say a Bausch & Lomb microscope was not used at the trial, and has been used here; that these markings were never brought to the attention of the jury at the trial on the breech block that have been here; that the firing pin dent, although used at the trial by Van Amburg, as I have shown in my brief, as an argument, their similarity in position -- he says "On the Fraher and all the others they are so nearly in the middle of them, that leads me to think they were fired out of the same gun."

That was his position at the trial; not that the Fraher was in the middle and the others were off, as turns out to be the case on enlargement, but all were so nearly in the middle that they must be fired from the same gun. Now, he comes along and explains that although one is in the middle and

the others are not, yet that divergence of the others might be caused by a shifting breech block or tolerance on the firing pin, and I say it is new evidence within the view of Judge Rugg when you so enlarge the impressions on the Fraher shell so as to show microscopically they are different marks. You, of course, find many similarities, but if you find any difference you have gone very far toward proving your case. It isn't the similarity that counts; it is the differences that count, as I have pointed out. I think my brother Williams has misinterpreted the Davis case. I haven't any question this evidence is not cumulative.

Now, as to its being newly discovered, that means in the law, if I may be allowed to say so, it means something different from non-cumulative. That is one thing. Newly discovered means you must not have known about it. They did not know about Hamilton. They did not know what a compound microscope would show. And what would bar this as being newly discovered as distinguished from cumulative, would be this, that before the trial they had got Hamilton and he had made these investigations and they had heard of them and they were in doubt as to whether they helped or hurt, and suppressed them, and then, having lost the verdict, they are put in. Then it would not be newly discovered.

It does not mean what Mr. Williams says. Newly discovered - it is not used in that sense in the cases at all. Newly discovered evidence and cumulative evidence are two different things entirely. I think they were confused by Brother Williams.

That brings me to the real matters I wish to discuss here, and perhaps it would be just as well, as long as it is

an entirely new subject, to stop.

The COURT. All right. Two o'clock.

(Noon recess.)

AFTERNOON SESSION.

Mr. THOMPSON. If your Honor please, I think it is a little weak to talk on the point of newly discovered evidence. I think it is a little weak to say that Burns and Proctor, or Burns and Fitzgerald, may have had a compound microscope and may have done all these things and may have discovered all the things Hamilton has now discovered.

In the first place, my impression is there was testimony as to what they did use, and doesn't include a compound microscope, and I am quite sure I heard Brother Williams say they did not have a compound microscope and did not have any such pictures as these with any such degree of magnification. In the second place, if they had, I presume he was there to cross-examine them and find out what they knew on cross-examination and if they held anything back to get it.

My impression is you won't be much influenced by the speculative hypothesis that these two men may have known all that Hamilton now knows and omitted to testify to it. It seems to me that is a desperate argument to put up at this stage of the procedure.

I just wanted for the moment -- I observe Mr. Moore and Mr. McAnarney have not sworn to it ^{they} as/have to some of the others, though not all of the motions. If there is any real, serious question in anybody's mind that counsel for the defense and defendants themselves had no knowledge of Mr. Hamilton or of a compound microscope or of such pictures as these at the time of the trial, it wouldn't take but a moment for

both of them to swear to it. That is a fact, and they will both swear they had no knowledge of any such thing.

They met Mr. Hamilton. Mr. Hamilton states in his own affidavit, as I pointed out, when he first met Mr. Moore, and that is also evidence which I think is set forth^{and} in the absence of any evidence except this mere speculative hypothesis, I think it is sufficient to establish the point that he did not meet him until long after the trial, until sometime last April, if I remember correctly. Then all these successive photographs and pictures came later. I do not believe your Honor will spend much time in considering the possibility that Mr. Burns and Mr. Fitzgerald may have known all about this and suppressed it.

Now, may I take the Sacco pistol. I shall be wanting some of the other exhibits from time to time, too. Mr. Hamilton, you might come up here, because I am going to ask you to help me a good deal in these demonstrations. It won't be necessary to have the microscope just this minute. It will in a moment, but the first demonstration does not require it.

Now, will you take down that pistol, uncock it so it is loose and rattles around as when Mr. Williams had it. Now, Mr. Williams said the barrel is loose. These handles rattle themselves, and the barrel rattles in there. This thing hasn't much motion; would have a little motion. Now, put the pistol in the position of firing, with a cartridge in it.

Will your Honor see if you can make any rattle in that barrel? Press it down there and see if you can make that barrel move. There is a rattle always in the handle. This is the part here. I wish it could be shown with the cartridge

in it. Of course, it cannot be; the cartridge is in the back part. The cartridge is held at the moment of firing perfectly rigid and in the same position. It is held there by that hook. Your Honor has the top that you are wiggling. I am talking about the barrel. The barrel is what changes the field of the cartridge on the firing block.

You can't move that. When the pistol is ready for firing, that hook there holds that barrel in position rigidly and always against the same part of the field. All this elaboration of detail, that at one time of firing the barrel might be lifted up so one part of the shell would be exposed to those firing marks on the breech block, and another time, down, and another time that way, and that the field is different each time, simply the whole force and effect is that Mr. Williams, when demonstrating, did not cock the gun, which it has to be when it is fired. If you consider that aspect of the matter, I think you will be inclined to reject a good many of his arguments in regard to the variation in the field, and that has a very -- when traced out to its consequences -- has a very important bearing on a good many of Mr. Williams' arguments?

The COURT. Have you a brief prepared on this?

Mr. THOMPSON. Yes. I haven't mentioned that particular matter.

The COURT. Let me give notice to the stenographers to prepare for me a copy of Mr. Thompson's claim in his argument, what Mr. Thompson has just now told me, what is not covered by that brief.

Mr. THOMPSON. A good deal will not be necessary.

The COURT. Just tell me so I can tell them.

Mr. THOMPSON. This part is not covered. Look at that, your Honor. That screw is loose there. That makes a noise, and the noise was essential, of course, to the general atmosphere of this demonstration. When a pistol is tight -- now, let me see another one of these sample pistols, the new Colt that you had and that are in evidence in connection with this case, in connection with your affidavit. I want all the exhibits here so that I can have them at hand. While the clerk is gone I will proceed perhaps informally with my argument.

An argument might perhaps be looked at somewhat askance which amounts to this: That Mr. Hamilton has labored all these months to produce an affidavit and to produce photographs in support of it for the purpose of proving the government's case, which would seem to be Mr. Williams' argument, largely based on Hamilton's, -- was to a considerable extent based on Hamilton's -- pictures and upon demonstrations drawn from them. It is hardly likely that Mr. Hamilton would acquiesce in the interpretation placed by Mr. Williams upon the careful work which he has prepared here in support of his affidavit and in support of the proposition the precise reverse of what Mr. Williams attempts to draw from it.

It is conceivable, of course, that Mr. Hamilton would be so stupid he would not know he was producing an argument for the government and producing photographs that would conclusively prove the guilt of Vanzetti and Sacco, but I think it is hardly likely he was in that state of mind. I think that will appear as we proceed with the demonstration in connection with the argument of Mr. Williams.

This is the first demonstration, that a part of that barrel that holds that cartridge cannot move a millionth of an inch when it is cocked. It can move all around when it isn't.

Mr. EVERETT. Mr. Worthington says these are no part of the case. They were simply left for safe keeping.

Mr. THOMPSON. I think they are in evidence. They are referred to in Mr. Hamilton's affidavit.

The COURT. If they are not in evidence -- look up and see whether they are in evidence or not.

Mr. THOMPSON. I suppose if there is to be a contention they are not in evidence, Mr. Williams would be naturally the one to make it, and I haven't heard him say he disputes these are in evidence. Mr. Hamilton tells me they are referred to in one of his affidavits. I have no knowledge except that; and these are referred to in the affidavit and annexed.

Mr. HAMILTON. These are photographed in the album.

The COURT. Do you say, Mr. Hamilton, one of these is referred to ---

Mr. HAMILTON. Both of these.

The COURT. In your affidavit? Go ahead.

Mr. HAMILTON. And in the photograph albums they are referred to.

Mr. THOMPSON. Now, in the same way there, we have cocked that pistol. Is that pistol cocked? That is a new Colt. That is cocked now, is it?

Mr. HAMILTON. It is.

Mr. THOMPSON. Ready for firing. No, not ready for firing now.

The COURT. The safety is on.

This is the first demonstration, that is, the first

showing that the first demonstration is a demonstration
of an inch when it is shown. It can move all around the
the first.

Mr. THOMAS. Mr. West, I have been told that you are

of the case. They were about half for each party.

Mr. THOMAS. I have been told that you are

related to the first demonstration.

Mr. THOMAS. It is not a demonstration, it is a

first demonstration, it is a demonstration of the

Mr. THOMAS. I suppose it is there is no

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Mr. HAMILTON. It is cocked now.

Mr. THOMPSON. The same way there, the barrel is rigid. Now, will you take it so that the barrel becomes loose and shaky? (Mr. Hamilton demonstrating.) They are made that way, if your Honor please, all those. There is another one. See, you can move it up and down. Probably the back part moves, too. The handles do not move of these. They have not been unscrewed.

Mr. HAMILTON. This is the one.

Mr. THOMPSON. There is the hook, there is the hook.

The COURT. If I pull this, it will go back in here, won't it?

Mr. HAMILTON. Got to pull that down; that is it.

Mr. THOMPSON. It is cocked now, is it? No, it has just been fired.

Mr. HAMILTON. Push this in.

The COURT. Yes, I know that. It is already to fire now, is it?

Mr. THOMPSON. What are these pistols worth?

Mr. HAMILTON. \$20.

Mr. THOMPSON. \$20. Now, I think that is sufficient for these. Perhaps you will put these away, Mr. Hamilton, because I am going to hurry on. I don't know where this belongs, I am sure. Is that the Sacco?

Mr. HAMILTON. That is the Sacco.

Mr. THOMPSON. Don't want to take that away. I regard them all as deadly instruments in the extreme. Now, will you let me have the Vanzetti revolver, please.

(The Clerk hands revolver to Mr. Thompson.)

The COURT. What is the difference in price between a

MR. BELL: This is the first time.

MR. BELL: The same way, the first is the first.

Now, will you take it as that the first is the first?

MR. BELL: (Interjecting.) They are not the first.

It is not the first, it is the first. There is another one.

You can see it is not the first. Probably the first one.

Now, the second is not the first. They have not been

discovered.

MR. BELL: This is the one.

MR. BELL: There is one, there is the one.

THE COURT: It is well said, it is well said.

MR. BELL:

MR. BELL: And to tell you, that is it.

MR. BELL: It is not the first, it is the first.

Now, the first.

MR. BELL: That is it.

THE COURT: Yes, I know that. It is already the first.

MR. BELL:

MR. BELL: That is the first one.

MR. BELL: Yes.

MR. BELL: Now, I think that is the first.

MR. BELL: Because you will not find any, Mr. Bell.

Because I am not in the first. I don't know what the first

is, I am not. It is the first.

MR. BELL: That is the first.

MR. BELL: Now, I think that is the first.

Now, it is already the first in the first. It is, will

you see the first, the first, the first.

(The first is the first.)

THE COURT: That is the first. It is the first.

Harrington & Richardson and one of the -- I don't know as I ought to ask him any question.

Mr. THOMPSON. Perfectly willing. I don't know. Mr. Hamilton can tell. I can't answer. About \$5, he says. I did not suppose a Harrington & Richardson cost so much.

The COURT. I was only thinking of the relative values. The automatic,-- I suppose that is what makes them cost so much more.

Mr. THOMPSON. Yes. Apparently the revolver now has become an obsolete weapon. I imagine that in the war they used this gun (indicating). Revolvers weren't used. Now, Mr. Hamilton, have you that little pocket microscope? Yes, I see you have it. Will you show his Honor the mark Mr. Williams pointed out and which is plainly visible there around that hammer screw today?

Mr. HAMILTON. I can give a better illumination there.

Mr. THOMPSON. Mr. Hamilton has a method of furnishing illumination which is perhaps worthwhile using.

(Mr. Hamilton rigs up lamp.)

Mr. THOMPSON. Now, if you will look through that; I will hold the light if you like. Mr. Hamilton, you better hold the light because you know about these illuminations. He knows how to illuminate these things. Now, you illuminate that picture the way it ought to be illuminated to show -- I want to show the scratch, and I want to show that at the present time the head of that screw is raised about $1/32$ of an inch above the level of the surrounding metal.

The COURT. I can see that with the naked eye.

Mr. HAMILTON. Just below the screw.

Mr. THOMPSON. Just below the screw is the line on the nickel of the side of the revolver. Now, will you get, Mr. Hamilton, your photograph, your largest photograph, if you have more than one, of the revolver as it was when you took the picture of it, and point out the absence of that scratch and the fact that the screw is down flush.

Now, in turning on the other side, you see it is not fully screwed up. The point has not come through. On that side it is up. The Court has seen that. He says he can see it with his naked eye $1/32$ of an inch up. Now, if you will show it on your photograph and compare those positions, put a magnifier on it and see if there is any scratch shown on that photograph in that corresponding plate down here. That is where the arrow comes.

In other words, if your Honor please, what that means is this: Not that anybody has committed a monumental fraud but that somebody perhaps in the course of a legitimate inquiry since the photograph was taken last April has taken out that hammer and in the act of doing it that made a mark which is now exhibited to your Honor -- no doubt used in good faith, but wholly fallaciously as indicating that somebody had taken out the hammer before this murder.

Now, we will take up the -- I trust your Honor will examine that all you please. I hope now nothing will be done to this screw until after your Honor has examined it pretty carefully.

The COURT. No. That is my order; or any of the other exhibits. I think that I might make an order now that all the exhibits shall be left with the clerk and they shall be kept exclusively in his possession.

Mr. THOMPSON. Very good. I hope anyway they won't be taken out of the jurisdiction, out of this state, because I don't -- might without any attempt, without any conscious intent at all. You have lead bullets and you have pistols knocking around and scratching up and all that sort of thing, and you can't tell. When these fine marks are in consideration, it does not pay to be throwing exhibits around much.

Now, Mr. Hamilton, let us see your sample Colt ejector. This little sample Colt ejector. Don't show it if the district attorney objects. I will take it first. That is not annexed to the affidavit. It is the part itself that forms the Colt ejector. There is your triangular ejector that Mr. Williams spoke so much about. If it is objected to, I will not show it to your Honor. It is taken out of a Colt revolver. No, it is not taken out -- it is taken from the shop before it has been finished to go into the pistol.

Mr. WILLIAMS. Why should that be introduced in evidence where you have the gun itself, Mr. Thompson?

Mr. THOMPSON. I haven't the gun except here in your presence.

The COURT. I do not think there is anything improper in showing ---

Mr. THOMPSON. A mere chalk, that is all.

The COURT. To the Court what this is. I can get a better view of it here.

Mr. THOMPSON. That is what I supposed.

The COURT. Than I can in the pistol.

Mr. THOMPSON. Take it apart and show it as well as you can, the pistol, so his Honor will see what part of the pistol this is. That is for a 380 and this is a 32. That is a larger

calibre. Now, let us put out -- where is the point, Mr. Hamilton? Put your pencil on the part that corresponds in those two. Now, I call your Honor's attention to the fact that this thing has to be filed, and there is the file marks. This has not been finished yet.

Mr. HAMILTON. No, those I put on myself.

Mr. THOMPSON. You will find file marks. It has to be filed to finish, and those marks themselves also furnish a means of identification. I did not know that. There is a little hand work on that, too.

Now, let us get your picture of Fraher F right in connection with this. There ought to be a big picture of the Fraher F, showing what is now claimed to be the corner mark of the ejector. Now, it is claimed here -- you have it turned wrong -- it is claimed by Mr. Williams that that was a corner mark made by the ejector. Now, you will notice the thumb of a human hand with three fingers down there. Just point it out and show it in the microscope, Mr. Hamilton, a deformed human hand.

The COURT. Let me have the microscope. Let me look at these, first.

Mr. THOMPSON. Right down in the bottom there, let me point that out, a curious little human hand formation down there, a thumb and three fingers. Now, will your Honor see if you can find that on Lowell 3 in the corresponding place.

The COURT. This one?

Mr. THOMPSON. Yes, sir. You are not looking in the right place, sir. There is the corner mark there, that is where it would be, right there.

The COURT. I see.

Mr. THOMPSON. Now, then, on Lowell 3 there is a cross line at right angles on the top. Show that, Mr. Hamilton, that so-called ejector mark. There isn't any on F-4 in the corresponding place. Now, on Fraher at that point there are file marks slanting to the left, and ^{only} one or two on the Lowell and they are curving to the right. Point those out, Mr. Hamilton.

Now, Mr. Hamilton, will you just show the exact process by which the claw hooks into the rim on the opposite side from the ejector corner and throws the shell out? Just what is the process of throwing the shell out of that pistol. I want to have the Court see that. Perhaps you can put the pistol together again and put in some blanks. You have fired a shell from it. You have taken the powder -- you haven't taken the primer out. Have you anything else you can put in there? I want to have the Court see a shell actually thrown out.

Mr. HAMILTON. Here is one in which the bullet and powder has been withdrawn.

Mr. THOMPSON. The bullet and powder are gone, but the cap is there. I guess you can keep it carefully in a way so the fulminate won't hurt anybody.

Mr. HAMILTON. Well, that claw --

The COURT. Look out, gentlemen, you are making these.

Mr. HAMILTON. Yes. That claw that works on the hinge, hooks into this notch behind that cartridge.

Mr. THOMPSON. On the opposite side from this?

Mr. HAMILTON. On the opposite side from this ejector. At the moment of explosion, the gases blow the bullet forward, blow the shell backward, and it is the explosion that drives the shell against the breech block.

Mr. THOMPSON. Which is right here (indicating).

Mr. HAMILTON. Right there. The pressure against the breech block throws the whole top there back, and as the shell comes back against this triangular corner it stops the left hand side, the claw still pulling, because the top carriage--- pulls it like a finger nail pulls it to the side. The side of the bullet,-- the side of the cartridge, the side of the cartridge is thrown over the front right side of ejector carriage and will either hit the corner of the carriage or the corner of the claw and usually leave a little dent midway between the base and the top of the shell out of Colt fire arms. This claw in the top carriage ---

The COURT. Throws the shell out here (indicating)?

Mr. HAMILTON. Throws it through this hole.

Mr. THOMPSON. Now, then, have you got a primer and an anvil taken from an old-fashioned Winchester cartridge?

Mr. HAMILTON. Yes, sir (producing same). I have now arranged under the compound microscope, using a one-inch eye piece, a two-inch ejector -- the anvil out of a primer of a Winchester 32 automatic pistol cartridge.

Mr. THOMPSON. Give the position in which it sits in the primer at the moment of the firing.

The COURT. I can see only one.

Mr. HAMILTON. Yes, there is only one. I have arranged it so that the little anvil point is directed towards your eye as you look into the microscope.

The COURT. Put your finger right on the point or mark.

Mr. THOMPSON. The finger is too big.

Mr. HAMILTON. I will take the primer away, because that is not involved in the present appearance. Let me see

if I got that where it was. The anvil is the elevation of metal in the middle. Upon your side of it are the two shoulders that support it in the primer cap.

Mr. THOMPSON. Where is the fulminate of mercury placed?

Mr. HAMILTON. I was going to show that now without using the microscope. I have now turned the primer over showing the fulminate of gray powder dried in the interior. Normally now, as I have arranged it, the anvil is bottom side up but in the shape that it fits down inside of the primer. Turning the primer over, the firing pin hits the primer at or near the center, punching in the surface, forcing the fulminate on the under surface of it against the little cone shaped anvil and at the moment of compact of the under surface of the primer against the top of the cone anvil with the fulminate between them, the initial detonation -- not the explosion -- detonation takes place..

Mr. WILLIAMS. May I be permitted to look at that?

Mr. HAMILTON. Which do you want first?

Mr. THOMPSON. Certainly. Now, Mr. Hamilton, will you kindly arrange the top of that unexploded primer so that the Court may see the considerable number of rings, lines and marks upon the primer even before it is struck by any firing pin?

Mr. HAMILTON. When I focus this for my own eye, if it is not perfectly clear for your Honor, turn this wheel a little to the right or left.

Mr. THOMPSON. Now, your Honor ---

Mr. HAMILTON. Just a little either to the right or left, according to your own eye.

Mr. THOMPSON. Now, at the moment of the detonation, the firing pin has made the indentation in the top of the primer. The fulminate of mercury, I may say as a matter -- I won't say of common knowledge, but scientific knowledge which can be ascertained from any of the encyclopedias or works which your Honor would ordinarily consult in such matters and would have a perfect right without any affidavit -- that detonates in about 1/35 of the time that it takes gun powder to explode. That is, 35 times quicker than gun powder in its detonation upon impact, long before the primer has had any chance even -- I mean the anvil -- even if it were capable of so doing, of diverging the firing pin one side or the other -- the detonation has taken place. The whole cartridge has been thrown back -- the explosion has followed -- the whole cartridge has been thrown back against the firing pin and the pin is in process of recoil, the top part has to throw the shell out and the file marks have already been recorded and the depth of the firing pin indentation has been completed and its location fixed.

Now, let us take the mortal bullet and Lowell V-3 for a moment, Van Amburg 3.

The COURT. I wish you would leave those -- all these exhibits that you have asked me to see. I want them all left here.

Mr. THOMPSON. But you can easily, if you lose that, you can -- we can easily furnish you with another one, any number of them, these anvils. Your Honor can do it yourself -- knock it out yourself.

The COURT. Put that in an envelope. What do you want it marked?

Mr. Johnston. Now, at the moment of the observation
the living air has made the indentation in the ice of the
primer. The distance of course, I say say as a matter —
I won't say of course, the distance, the distance, the distance
which can be measured from any of the indentations of
which which two holes would certainly occupy in each primer
and would have a perfect right without any difficulty — that
distance is about 1/32 of an inch that it takes the powder
to explode. That is, at times, unless the powder is
the distance from the primer, the primer the primer
distance — I mean the width — that is, the width
of the hole, it is the distance from the side of the hole
— the distance from the hole. The whole distance is
that distance — the distance has followed — the whole
distance has been shown that distance the primer and
the hole is in process of being, the hole has to show
the hole and the hole has already been shown
and the hole of the hole is the hole of the hole
the hole is fixed.

Now, let us take the whole hole and the hole is the
a hole, the hole.

Two holes. I will say that there are — all three
holes and the hole is the hole. I will say that there
are.

Mr. Johnston. Now you can see, if you see that, the
and — no one really thinks for the primer and, any primer
of the hole, the hole. You know that it is the hole.

There is no primer.

The hole. The hole is the hole. That is the hole.

Mr. THOMPSON. "Hamilton chalk No. 1."

The COURT. All right.

Mr. THOMPSON. Did you have any other chalks? Oh, yes, chalk No. 2, that little bit of a thing. That is chalk No.1.

The COURT. Yes.

Mr. THOMPSON. While they are getting out the mortal bullet-

The COURT. Here is the mortal bullet.

Mr. THOMPSON. I don't mean the mortal bullet. Just before we proceed with that, just show his Honor the firing pin in Sacco's pistol as it lies.

The CLERK. Here are one and two.

The COURT. One and two chalks.

Mr. THOMPSON. The cartridge 2, and the model ejector "Hamilton chalk No. 1."

Mr. HAMILTON. I haven't the tool for pushing that out and holding it. There is a regular device for pushing it out and holding it. I left it down in Turner's.

Mr. THOMPSON. There, I just want to show your Honor, have your Honor notice, if you can, looking through a glass or otherwise, how much so-called tolerance there is between the end of that pin and the hole inwhich it moves, and whether or not the pin is sagged over to one side.

The COURT. Do you want I should look at it through this one?

Mr. HAMILTON. That is easier. It is better to use it that way. There is a hand to fix any distance you wish.

The COURT. No, I don't get a good view. This bulb light is in my way.

Mr. HAMILTON. Put the bulb over toward me.

The COURT. Now, I have got it.

Mr. THOMPSON. I ask your Honor to consider to what extent that pin could be diverted by that little anvil under the circumstances I have mentioned and that your Honor has seen. Now, we will come, if your Honor please, to the mortal bullet and Lowell-V-3, showing the difference between the one groove on the mortal bullet in the compound microscope and the three grooves on Lowell 3, and when you have looked at the one groove on the mortal bullet and have seen, as I think will be seen, only one, then it will be no longer necessary to discuss the significance of some line on some photograph which it is claimed by the government shows a second groove on the mortal bullet. If you can put them side by side so as to get your highest degree of magnification on there so that everything that is there can be seen, it will be a good thing.

Mr. HAMILTON. Let me focus it for you first. I have now arranged under the compound microscope -- the same adjustments before mentioned -- the mortal bullet, exhibit 18, so that as viewed by the Court in the microscope, the base of the bullet is towards his body, with the single cut, large cut -- at his right. As arranged, it shows the groove mark that appears on page 5 of the supplementary album.

Mr. THOMPSON. Now, can you get that page 5 and show ---

Mr. WILLIAMS. Has your Honor finished looking?

Mr. THOMPSON. Let us finish our demonstration. I did bother you in your demonstration.

Mr. WILLIAMS. You were looking around as you showed various articles.

Mr. THOMPSON. I wish now to compare it with the other. I want his Honor to look at it very much.

Mr. WILLIAMS. I wanted to see it in the same view his Honor does.

Mr. THOMPSON. I am not going to change that a particle. I want his Honor to compare that.

The COURT. No harm to look at it. Now, which one is it you want, Mr. Hamilton?

Mr. HAMILTON. Page 5.

Mr. THOMPSON. Of the supplemental album. I should like to have your Honor compare that picture there for the purpose of determining the reliability of Mr. Hamilton's photography with what you have just seen in that microscope and see if the photograph is not a fair illustration of what you have seen in the picture -- I mean in the microscope. I would like now, if you don't mind, to take a look at it myself. I have never done so. I have never looked at this mortal bullet. Which way is the cut, Mr. Hamilton? The right? Oh, yes, I can see.

The COURT. Look more this way.

Mr. THOMPSON. The cut is this way as we look at it.

Mr. HAMILTON. Parallel with your body.

Mr. THOMPSON. Parallel with my body. I ask your Honor if there is any other cut there except that one, whether Mr. Hamilton's picture isn't right, and whether the attempt to show on that picture another cut isn't an attempt to take advantage, no doubt legitimately, but none the less sophistically, of some matter of photograph rather than a question of what is on that bullet.

And also I ask your Honor to consider in this connection, an attack having been made upon my characterization of Van Amburg's photographs, what is to be said of a photograph which

Mr. WILLIAMS. I wanted to see if in the same

view the same day.

Mr. THOMPSON. I am not going to change that a particle.

I want his bones to compare that.

The COURT. He came on back at 11. Now, when was it

11 o'clock, Mr. Hamilton?

Mr. Hamilton. Yes.

Mr. THOMPSON. Of the experimental error. I should

like to have your honor compare that figure with the

figure of determining the reliability of Mr. Hamilton's

testimony with what you have just seen in that photograph

and see if the photograph is not a fair illustration of what

you have seen in the picture - I mean in the photograph.

I would like now, if your honor's mind, to take a look at 10

o'clock. I have never done so. I have never looked at this

marked bullet. What way is the way, Mr. Hamilton? The

right? No, yes, I can see.

The COURT. Just more this way.

Mr. THOMPSON. The way is only way as we look at it.

Mr. WILLIAMS. Related with your body.

Mr. THOMPSON. Related with my body. I am just

looking at this is any other way there except that one, which

is Hamilton's picture 10 o'clock. Now, what is the attempt to

show called "The Hamilton and the" an attempt to show

advantage, as I have just said, the same the same picture.

Really, of some matter of photographing that a picture

of what is in that picture.

And also I ask your honor to consider in this connection,

in which picture has been made that of Hamilton's picture of the

picture's picture, that is to say, of a picture of a

doesn't show the side of the mortal bullet the way that shows there, but makes a pretence of showing there is another line, although very faint indeed.

Now, then, I would like to have you show the case of double lands on the mortal bullet, and the same on the Lowell bullet, being the one photographed at Bridgeport, which I think was V-3, and point out clearly what the double lands are so that there never need be any misunderstanding about what that word means. V-3.

Mr. HAMILTON. Exhibit 35.

The COURT. You have got the mortal bullet, haven't you?

The CLERK. No, it is on the stand.

The COURT. Oh, yes, I was looking all around and I couldn't see it.

Mr. HAMILTON. Pardon me, may I take one of these (one of the albums). This is mine, I think.

Mr. THOMPSON. V-3, isn't it, by common consent was the one also photographed at Bridgeport, Conn?

Mr. HAMILTON. You take those two, please.

Mr. THOMPSON. You might put sometime the end of the dividers ---

Mr. HAMILTON. Don't touch the bullet with this.

Mr. THOMPSON. --- on the double lands and point in the direction ----

Mr. HAMILTON. I have now arranged under the microscope aside the mortal bullet the V-3. Can't show them both at once, I can show one at a time.

Mr. THOMPSON. What degree of magnification have you there, Mr. Hamilton?

Mr. HAMILTON. I will have to look on the table to tell

you that, just a minute.

Mr. THOMPSON. No matter.

The COURT. Is this the same as that, same make?

Mr. HAMILTON. It is the same make. I don't know what -- but that is a higher power objective. This is too high. I have now arranged the Lowell test bullet, Van Amburg No. 3 of Exhibit 35, in the same arrangement with the groove mark uppermost, showing the two parallel cuts that appear on page 5.

Mr. THOMPSON. Yes. Now, can you show the double land marks?

The COURT. May I ask one question here? How does it appear that the lands here, land mark here, is the same as on that bullet?

Mr. HAMILTON. Shall I answer that?

Mr. THOMPSON. Yes, go ahead.

Mr.. HAMILTON. Do I understand your Honor to mean the elevation of metal on your right hand side, that edge of the -- what you are pointing to?

The COURT. I mean that mark right there (indicating).

Mr. HAMILTON. That bright metal?

The COURT. Right in here, no, that little groove right in there; whether that is the same as the groove on the corresponding bullet.

Mr. HAMILTON. If I understand you correctly, that is that -- that is the left hand groove as the bullet is going forward. That is the left hand groove. Upon each of them, of the land mark that has the cuts on them ---

The COURT. Let me have -- perhaps I have not made myself clear.

Mr. HAMILTON. Let us take the photograph and let me

100 feet, about a minute.

Mr. Thompson. To what?

The court. On this side there is a lot, some water.

Mr. Thompson. It is the same. I don't know what

but that is a higher level than the other. This is the level.

have now extended the level to the other side, the level is

of about 10 feet, in the same direction with the other side.

appears, showing the two levels, that the level is the same

Mr. Thompson. Yes, the level is the same as the level

level.

The court. I don't know the level. The level is

appears, showing the level, and the level, in the same way

level.

Mr. Thompson. I don't know the level.

Mr. Thompson. Yes, the level.

Mr. Thompson. I don't know the level. The level is

level, showing the level, and the level, in the same way

level.

The court. I don't know the level. The level is

Mr. Thompson. I don't know the level.

The court. I don't know the level. The level is

level, showing the level, and the level, in the same way

level.

Mr. Thompson. I don't know the level. The level is

level, showing the level, and the level, in the same way

level, showing the level, and the level, in the same way

level, showing the level, and the level, in the same way

The court. I don't know the level. The level is

level.

Mr. Thompson. I don't know the level. The level is

explain it.

The COURT. Let me have a couple of -- some shells. I can explain what I have in mind.

Mr. THOMPSON. Have you a cartridge itself?

Mr. HAMILTON. Here is a bullet right there.

The COURT. I don't know as it would make any difference.

Mr. HAMILTON. Here is a bullet.

The COURT. I don't know as it would make a particle of difference which way they are put in. In other words, supposing this bullet was put right in -- or a cartridge ---

Mr. HAMILTON. Into the barrel?

The COURT. --- and they were both put in exactly alike. Then I see what you have in mind. But supposing you take a land mark that is made here on this part, a corresponding land mark might not be on this, would it?

Mr. HAMILTON. Pardon me, the land marks do not appear upon the shell, only upon the bullet.

The COURT. I mean the bullets. When I said the shell, I meant the bullet.

Mr. HAMILTON. If I understand you correctly, no matter how the cartridge is put into the gun, when fired the land mark that appears upon the different parts of the -- of that particular bullet will correspond only to the particular land at the top or the bottom or side that made it. Is that what I --

The COURT. That is right.

Mr. THOMPSON. Now, that leads right -- while I think of it, I will take a look at that, because this is my first opportunity to see this. Now, I want you to show, Mr. Hamilton, a so-called double lands, that is, the preliminary scratch

The Court. Let us have a couple of -- a few minutes.

Can explain what I have in mind.

Mr. Tamm. Give you a definition of what

Mr. Tamm. There is a definite right to be

the Court. I don't know as it will make any difference.

Mr. Tamm. There is a right.

The Court. I don't know as it would make a difference at

difference which way this case goes. In other words, in passing

this matter we are not right or -- in a position --

Mr. Tamm. Just the matter.

The Court. -- and may have been put in exactly right.

Then I am sure you have to wait. But suppose you have a

land where there is some kind of this sort, a correspondence and

with right not to be on this, would it?

Mr. Tamm. Suppose we, the land where do not expect

from the right; only from the right.

The Court. I mean the right. There is no right.

I mean the right.

Mr. Tamm. If I understand you correctly, is there

for the right? Is not this the case, when there is a

and that right? From the right? From the right?

And that right? From the right? From the right?

at the time of the right? From the right? From the right?

The Court. There is right.

Mr. Tamm. Yes, but there is not a right? From the right?

at the time of the right? From the right? From the right?

And that right? From the right? From the right?

And that right? From the right? From the right?

that each of those bullets got and that every bullet gets somewhere on it before it engages the lands and begins to get its real twist at the top. Take it with reference to the deep cut in the one and with reference to two cuts in the other. Then we can count around and see how far away from the initial double land marks, which mark or spread of the bullet out at the top, one cut is in one instance and the two cuts are in the other instance, and see if there are any corresponding grooves.

Mr. HAMILTON. I have now arranged the mortal bullet and the test bullet, Lowell Van Amburg 3, so that on the mortal bullet the first land mark to the right of the cut that I have already shown the court is the one that has the double land mark at its upper end. Beside it is the test bullet with the first land mark having at its upper end a double land mark, but on the test bullet it is the second land mark to the right of the cuts and on the mortal bullet it is the first land mark to the right of the cut.

Mr. THOMPSON. I want your Honor to see that, because it is of extreme importance. I tried to point it out and I have in my brief, but no English words will convey that idea without an actual observation of what it really is. Even if the two cuts, in other words, on all the test bullets and the three cuts on most of them were equivalent to the one cut -- if that step of the argument might be granted -- you would still find, them in a different relative position on the bullet, from the one cut, indicating that they could not have been made by the same pistol. That is a point Mr. Williams has not mentioned at all in his argumennt,

and it is a point that is really conclusive of this whole matter.

You see, when the bullet begins to leave the pistol, it begins to engage the land and the first lands it engages are those right on the top. That is where the big twist begins. Now, if you take corresponding double lands -- and which are the scratches made by the edges or ends of the lands when they first engage that bullet, the beginning of them -- and put them in corresponding places, then you have got a fixed point. Then turn to some other point which is of importance, like the single or double cut and see if it is in the same relative position. If it isn't, it wasn't made by the same pistol, no matter if it is one or five marks, it doesn't make any difference how many it is.

Mr. HAMILTON. I have now placed the mortal bullet for the first observation so that the top of the land mark with a double cut at the top is plainly visible in the microscope, only with the bullet, that the base of the bullet would be towards the Court in the microscope, the microscope reversing it right across the top and right there.

Mr. THOMPSON. I want the Court to see what a double land mark is so he will understand it, what it really is.

Mr. HAMILTON. That extra scratching.

Mr. THOMPSON. It isn't one mark. It is a space that is scratched up. It isn't one mark. It is a space that is scratched. You explain what it is.

Mr. HAMILTON. Before the bullet begins to rotate ---

Mr. THOMPSON. Explain it.

Mr. HAMILTON. It is the mark the bullet gets before it starts to rotate.

and it is a fact that it really consists of this and
nothing.

You see, when the matter begins to become serious,
it begins to appear like this and the thing is not
the same thing as the other. This is what the thing
is. Now, if you have something to say about it --
which are the various kinds of the thing or what it is
like that. This thing is not like that, but it is not
like that -- it is not like that in any way, but it is
not a thing at all. Then how is it possible that it is
at all? The thing is not like that, but it is not
like that. It is not like that. It is not like that.
It is not like that. It is not like that. It is not
like that. It is not like that. It is not like that.

Mr. [Name], I have not placed the matter before the
the last observation so that you may see the thing
which is not at all the same thing as the other.
only with the thing, that the thing is not like that.
because the thing is not like that, the thing is not
like that. It is not like that. It is not like that.
It is not like that. It is not like that. It is not
like that. It is not like that. It is not like that.

Mr. [Name], I want the thing to be what it is.
and that is the only thing that it is. It is not
like that. It is not like that. It is not like that.
It is not like that. It is not like that. It is not
like that. It is not like that. It is not like that.
It is not like that. It is not like that. It is not
like that. It is not like that. It is not like that.

Mr. THOMPSON. Now, what part of the pistol makes that mark?

Mr. HAMILTON. The top land, in the rear.

Mr. THOMPSON. Van Amburg, in one place in his affidavit so states, also, and it must necessarily be so.

Mr. HAMILTON. I have now placed the Lowell Van Amburg 3 in the same field, showing the double land mark upon that bullet, this being the second land mark instead of the first, to the right of the cap.

The COURT. Let me push this one right over now until I get it.

Mr. HAMILTON. Just push it right across with your own finger, slowly, that is. Then you stop it where you want it. It isn't enough, yet.

The COURT. Now it is coming. All right.

Mr. HAMILTON. All right. Do you want to come back?

The COURT. No. I guess I will go back. Let Mr. Williams see that now.

(Mr. Williams makes examination.)

Mr. THOMPSON. Mr. Clerk, let me have the two wooden bullets I gave you yesterday.

Mr. HAMILTON. It moves in the opposite direction to what you want it. Here it is. That is the lower.

The COURT. Let me take one more look at the other.

Mr. HAMILTON. You watch it, because I cannot say when it is across.

The COURT. There, that is all right.

Mr. HAMILTON. Like that.

Mr. THOMPSON. Now, Mr. Hamilton, taking these two wooden chalks that I used in my argument, first what is the degree of

magnification of this?

Mr. HAMILTON. They are just turned off according to the size of the wood.

Mr. THOMPSON. Illustrate on these. The size makes no difference, except it makes visible what I have been trying to point out.

Mr. HAMILTON. This is what I have just shown to the --- on the mortal bullet I showed him this first land to the right. He looked at this land mark on No. 1, the first cut, first land cut to the right of the single big cut on the groove. On the other I started with the three cuts, passed the first one which had no double land mark, went over to the second one, and showed you the first part, first double land mark that is on it as you rotate the arrow to the right.

Mr. THOMPSON. In other words, whether or not your three marks could have been made by the same imperfection in the breech, rather, in the barrel, which made the single one, nevertheless they are made not in corresponding parts of the bullet and could not be made with the same pistol.

Mr. HAMILTON. Well, as they are numbered, land No. 1 is the one that made the one on the mortal bullet and land No. 1 upon the test bullet is the second one over instead of the one next to the cut.

Mr. THOMPSON. Yes.

The COURT. We will take our afternoon recess now, five minutes.

(Short recess.)

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Mr. THOMPSON. Now, Mr. Hamilton, if you will come forward again. Have you photographs 1-a and the other one that went with it, the third photograph which Mr. Williams had on the table there? I want, as long as you are on it, and have the bullets under the microscope, I want to show the slippage. I am speaking of those little photographs laid out by Mr. Williams on the table in which he suggested the element of uniform slippage all the way through, and although you wouldn't attach much consequence to one similarity yet when you had a great many instances, he thought it was important. I would like to take and start with 1-a. Give me the package of pictures. I will try not to disarrange them. Perhaps Mr. Williams will pick them out and give us what we ask for.

Now, if your Honor please, you can start these comparisons in one of two ways. You can start the comparison on the theory that the three cuts which have just been pointed out to you here and in the microscope are in the same land mark as the one cut and that that corresponds to that (indicating). That is the way Mr. Williams started.

Or you can start with what we believe to be the incontestible truth, that that corresponds to that (indicating), because it is in a different position from that (indicating). That is in the second place from the nearest double land mark and that is in the first place, and compare those.

Now, I am going to do both things, and I am going to show you if you make the comparison on the theory of Mr. Williams you will find no similarity whatever in the slippage. You will find similarity, of course, because they are both slippages. But you will find distinct and characteristic

Mr. Thompson. Now, Mr. Jackson, if you will read the
 card again. Here you observe the 1-2 and the other one that
 went with it, the third one which is, which is the
 the table card? I said, as long as you are in it, you have
 the table card under the microscope, I want to know the
 I am sure of it from the microscope laid out by it.
 William of the table is which is supposed to be the
 subject always all the way through, and although the subject
 attend and observe to one similarity yet when you have a
 great many instances, the subject is not identical. I would
 like to take an example with 1-2. Give me the reason for
 please. I will try not to disturb them. Please do.
 William will give them out and give it what we call for.
 Now, if you have please, you can start to me on any-
 one of the two ways. You can start the competition on
 the theory that the subject will have the same policy, but
 to you this and in the microscope and in the same way, and
 as the one and the other subject, the subject is not identical.
 That is the way Mr. William started.
 Now, you can start with what we believe to be the same
 subject, that that subject is not identical.
 Because it is in a different position from that subject.
 That is the second place, the subject is not identical.
 Now, that is in the first place, and subject lines.
 Now, I am going to do with this, and I am going to
 show you it you make the competition on the theory of it.
 William you will find an identical subject in the subject.
 You will find identical, of course, because they are both
 identical. And you will find identical and identical.

marks of difference looking at it in the microscope as distinguished from looking at his photographs, and the same will appear if you take it the other way.

If you will start with Mr. Williams' hypothesis and assume you are wrong in your demonstration made a moment ago, and assume 1 and 2 are the same thing, and start with the top side up, start with Mr. Williams' hypothesis, the three marks are on the same corresponding place as 1.

Mr. WILLIAMS. You did not mean 2 and 1 are the same thing?

Mr. THOMPSON. I meant I considered your hypothesis was fallacious as/as it would be to assume 2 and 1 were the same. That is what I mean. Perhaps I should not have said that. I meant as as an arithmetical problem in addition or enumeration.

Mr. HAMILTON. What is it I am to show the court?

Mr. THOMPSON. Now, first show on the hypothesis that the three marks in the one are in the same place, corresponding place as the one mark in the other, in the mortal, that being the theory, as I understand it, on which these slippages were compared.

Mr. HAMILTON. I will take this one right over here.

Mr. THOMPSON. Tell him what you are measuring from.

Mr. HAMILTON. I am now measuring from the right edge of the groove mark on photograph A with dividers to the left edge of the second parallel and largest cut near the middle of the groove mark.

Mr. THOMPSON. On V-3.

Mr. HAMILTON. Yes, on the photograph A of V-3.

Mr. THOMPSON. Now, why do you measure from that white

mark instead of the black mark?

Mr. HAMILTON. Because the white mark,-- the straight edge is the edge cut by the land. This curved, irregular edge is the roll of the metal.

Mr. THOMPSON. Oh, yes.

Mr. HAMILTON. That is not a slippage. That is a roll of the metal, crowded up, and the bullet went forward. That was the riding edge. The bullet rode against that little anvil and forced that metal up there. Now, I have fixed the dividers for that distance. I place it upon photograph 1, start up at the cannonlure and follow the right edge -- down, looking for a groove or a cut on the mortal bullet as I pass down. I find none. Beginning clear above I find nothing to takes its place. I now take the opposite side of the same cut. I take the right edge of this long cut on V-3 photograph and measure off that distance with the dividers and go back to photograph 1, place one point on the edge and bring it down and I find a little scratch on the photograph. Now, I check that scratch up by taking the bullet itself from which that photograph is supposed to have been made and see what it is on the original. And I have now arranged for the court to look at the bullet itself. I won't say anything. Let the Court look. I was looking for the scratch that appears on the photograph.

Mr. THOMPSON. The scratch is not there, if your Honor please.

The COURT. I don't know as it makes any difference, but before I get through I am going to look between the lands, between every land on each of those bullets.

Mr. THOMPSON. I want you to do it. I doubt if your Honor will ever be in better position to do it than now. Here is

a man who understands the microscope as well as anybody in the United States. I think you better do it.

The COURT. I will do that later.

Mr. THOMPSON. Now, let me just proceed with what I had in mind.

The COURT. Sure.

Mr. THOMPSON. Now, that is on the assumption that the two, that the one scratch and the three are in corresponding places. Now, point out to the court on that assumption the difference in the slippages.

Mr. HAMILTON. That is you mean taking them as claimed, as they arranged them?

Mr. THOMPSON. As they arranged them, not as you believe them to be, but as they arranged them. What pictures have you now, Mr. Hamilton?

Mr. HAMILTON. I have now ---

Mr. THOMPSON. B and 2?

Mr. HAMILTON. B and 2. At the widest point it is 10 one-hundredths of an inch wide on B. If you wish to look at it. On the widest point ---

The COURT. Let me write it so I can carry them in my mind.

Mr. HAMILTON. The widest point on that one, 13 one-hundredths of an inch wide below the cannonlure; 14 one-hundredths wide above the cannonlure. 220 long on 2; 215 on the other. I have not turned them up and looked down them to see their shape. Looking lengthwise of them.

Mr. THOMPSON. What could he see there?

Mr. HAMILTON. He could see it better than I could.

Mr. THOMPSON. Now, have you finished with that?

The COURT. Let me take the ---

Mr. HAMILTON. Rule?

The COURT. My little pliers. Let me try it another way then.

Mr. THOMPSON. Now, will your Honor try it in the wider part? Mr. Hamilton's suggestion of measuring on the top of the roll of metal is just as good, the difference will appear, but it isn't as accurate as it will be to measure on the lands.

The COURT. The difficulty is in getting right in the center. Where would be the place on this bullet? Here we have the knurls and on here where would be the corresponding part?

Mr. HAMILTON. This distance up from the bottom, the knurl is 160.

The COURT. A little higher.

Mr. HAMILTON. The knurl is 160.

The COURT. Just a shade ---

Mr. HAMILTON. Down towards you?

The COURT. Towards you.

Mr. HAMILTON. That is just 160. Come up on this bullet 160 and you have got it.

The COURT. You hold ---

Mr. HAMILTON. 160 where my pencil is on there. This is the metal roll here, here is the land.

The COURT. Right here?

Mr. HAMILTON. Yes, right there. This (indicating) is all roll of metal.

Mr. THOMPSON. Either way you measure it doesn't make any

difference. Now, Mr. Hamilton, if you have finished your demonstration on those pictures, just show on the bullet itself, on the two bullets themselves, in the corresponding places -- assume now that the government is right that the triple cut land mark corresponds to the single cut groove mark -- just turn the bullets there and show the court through the compound microscope what the difference is.

Mr. HAMILTON. This same comparison?

Mr. THOMPSON. yes, that those so-called slippages do not correspond. Then we will show it from what we believe to be the true corresponding places, showing still greater lack of correspondence.

Mr. HAMILTON. I want to make that easier for the Court. (Leaves bench and returns.) I have now arranged ^{the} with the land groove represented by photograph No. 2 so that the entire length is visible under the microscope from the base of the bullet to the top of the slippage.

Mr. THOMPSON. May I look at this, your Honor?

The COURT. yes.

Mr. THOMPSON. So I can see what these things show. Where is the slippage?

Mr. HAMILTON. You will see. You are looking cross wise. You come where I am when the bullet is pointing towards you.

Mr. THOMPSON. I don't want to take up the time of the Court doing it.

Mr. HAMILTON. You want to point the bullet right to you.

Mr. THOMPSON. The slippage are those lines off this way as I look, aren't they?

Mr. HAMILTON. The slippage is on your left hand.

The COURT. Point it out to him so he can see it.

Mr. THOMPSON. The two lines to the left there. I can see where it failed to catch, and on the right that big line is the straight land mark?

Mr. HAMILTON. Yes.

Mr. THOMPSON. It isn't a cut at all. It is dried blood.

Mr. HAMILTON. No, look in there and see for yourself blood on the bullet. It has never been washed.

The COURT. Do you want to see that?

Mr. WILLIAMS. No.

Mr. THOMPSON. Now, then, arrange them in the way that we contend is the corresponding land marks or grooves.

Mr. HAMILTON. I was comparing the length of those lands. They are not the same. I do not want to take up the court's time. I was comparing these. While these to the eye look to be alike -- now, look for that on the bullet itself. In the photograph it goes clear to the base of the bullet. On the bullet itself it doesn't.

Mr. THOMPSON. That is the same corresponding space. In the photograph it goes clear down to the bottom and on the bullet it doesn't, and it isn't a scratch at all.

Mr. HAMILTON. That is a scratch.

Mr. THOMPSON. That is a scratch?

Mr. HAMILTON. Oh, yes, that is, and it is an elevation, I think. I will look again.

Mr. THOMPSON. Can you give us any explanation why that is so?

Mr. HAMILTON. No, I just noticed it, and wondered why it was so.

Mr. THOMPSON. Now, then, if you have finished that. I presume we could spend all the afternoon on points that never

occurred to any of us. This is interesting. Will you arrange those two bullets so they correspond as we claim, not as the government claims, the land mark of the three grooves corresponding to the one, but the way that we ---

Mr. HAMILTON. I know how that was done. Excuse me.

Mr. THOMPSON. You know how that was done?

Mr. HAMILTON. Yes.

Mr. THOMPSON. What was it?

Mr. HAMILTON. It is dried blood. It is broken off on the bullet now. That is dried blood, that would test out. You could easily test that and verify it. That is dried blood broken off since that photograph was taken, because this appears to be a contradiction of that. You can see that is not metal. It is dried blood. That is why it is missing on one and present on the other.

Mr. THOMPSON. Well, now, if you will go ahead and make your comparison with the two places with which we believe they correspond.

Mr. HAMILTON. Now, I will show slippage on another part. That is the most favorable. Now, take the other end. Here is two right there.

Mr. THOMPSON. All right. Now, you are still following the government's theory of correspondence?

Mr. HAMILTON. Yes. Now, there are two slippages.

Mr. THOMPSON. Point out the slippage.

The COURT. L and 12.

Mr. HAMILTON. The slippage is practically twice as wide.

Mr. THOMPSON. This you call the slippage, over here?

Mr. HAMILTON. That club shape, the slippage on that is

...to say of it. This is interesting. Will you
...those who believe in the correctness of the
...the government claim, the fact that of the
...in the way, but I am not sure that...

Mr. Hamilton. I am not sure that was the case.

Mr. Hamilton. I am not sure that was the case.

Mr. Hamilton. I am not sure that was the case.

Mr. Hamilton. I am not sure that was the case.

Mr. Hamilton. I am not sure that was the case.

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Mr. Hamilton. I am not sure that was the case.

Mr. Hamilton. I am not sure that was the case.

Mr. Hamilton. I am not sure that was the case.

Mr. Hamilton. I am not sure that was the case.

15 one-hundredths of an inch wide. On L it is 10 one-hundredths of an inch wide. That is the main thing of those, and the roll of metal, here is a narrow, thin roll of metal extending uniformly the whole length 255 one-hundredths inches long. This one, it is 235 long, and here at the top 15 one-hundredths inches wide, tapering down to the lower end, showing the difference between the roll up, the slippage and the slippage there.

Mr. THOMPSON. Now, then, take and arrange them in accordance with what we contend to be the true arrangement, if you will.

Mr. HAMILTON. Just a minute. The court wishes to see it.

The COURT. I don't know just down here where to measure.

Mr. HAMILTON. Well, there is the termination of the slippage right in there where I am pointing. There is the termination of the roll of the metal, a little narrower. That is right in there. One thing you are measuring diagonally up this way, and just now you are measuring diagonally down. Usually it is straight across at right angles. That is it.

The COURT. Is that right?

Mr. HAMILTON. That is better. Parallel with the base.

The COURT. I wish you would draw a mark there.

Mr. HAMILTON. I can show you those spots on the original.

Mr. THOMPSON. His Honor means where the knurling ---

The COURT. Draw that on that one.

Mr. HAMILTON. From the bottom of the bullet up it is 155, to the bottom of the cannonlure.

The COURT. I should think somebody had marked right across there. That is right, is it, a mark?

Mr. HAMILTON. It is a mark there. That only measures,

that measures 145. That is 10 below the cannonlure on that. Somebody marked that up. I will leave the rule there and you can pick your own 155. That will be the first mark above the long one.

The COURT. I don't get you now. Where on this one will this part, the upper part of the knurls be?

Mr. HAMILTON. I will point to it.

The COURT. You put it right where it should be.

Mr. HAMILTON. It would be that little mark there. That is the thickness of 150, that is 155, a little further down, right there, down lower further toward you.

The COURT. What do you mean?

Mr. HAMILTON. Pull it towards you.

The COURT. Up?

Mr. HAMILTON. Towards you a little bit, more, more, more, there, there you are.

The COURT. I have forgotten now. Get that again. I don't know whether I took from the outside.

Mr. HAMILTON. You are away over. There, that is what you want, right there, right there, that is it.

The COURT. Is that right?

Mr. HAMILTON. Your left hand isn't on top yet. There you are.

The COURT. Is that about right? That looks like it.

Mr. HAMILTON. You are down in the bottom of the groove on your left side.

The COURT. Which should I do?

Mr. HAMILTON. You are putting this measurement on there, and it lets you down into the bottom of the groove. This is too wide. When you get down over here, it lets you down in there.

Mr. THOMPSON. Now, Mr. Hamilton, do you want to arrange the bullets? First take one of the, the one sample when the bullets are arranged as we contend is the proper arrangement.

Mr. HAMILTON. If you arrange them according to the groove mark, that corresponds. I will take them out according to the land, the top land in the guns. Assume that they were both fired in the same gun, then the comparison has to be A compared with 11. Those two are the ones that go together, and that goes right through B -- B.

Mr. THOMPSON. Better leave them. Take the two that come together and then put them together. Show whatever this shows now.

Mr. HAMILTON. This, -- wait a minute. That doesn't -- yes, that is the mortal bullet. A goes with 11. That is the groove mark in the mortal bullet that corresponds with the groove mark on the test bullet having cuts upon it, see?

Mr. THOMPSON. Yes.

Mr. HAMILTON. That is the way that is. And B, which is a land mark, would go with 10.

Mr. THOMPSON. 10 going over there?

Mr. HAMILTON. That goes over there. Now, you get your slippage variance distance, see? Here comes your first double land.

Mr. THOMPSON. First double land is there where you are pointing your finger?

Mr. HAMILTON. And none on here; and that goes right through the whole.

Mr. THOMPSON. No correspondence whatever in the slippage that way.

Mr. THOMAS. Now, Mr. Senator, do you want to

change the policy? First take care of the one single
 point the policy are arranged as to conduct in the future
 arrangement.

Mr. SULLIVAN. It is a matter which depends on you

more than that, that is the question.

According to the fact, the way is to the point. As

that they were not first in the same way, that the country

has not to be a country with it. Those are the two

that are together, and that have that the country --

Mr. THOMAS. Better leave that. Now the two that

are together and that are also together. Now whether this
 thing is.

Mr. SULLIVAN. That -- well a minute. That is the

fact, that is the whole thing. I am with it. That is the

whole thing in the whole thing that is the whole thing

which is the whole thing that is the whole thing.

Mr. THOMAS. Yes.

Mr. SULLIVAN. That is the whole thing. That is the

whole thing, which is the whole thing.

Mr. THOMAS. Is that the whole thing?

Mr. SULLIVAN. That is the whole thing. That is the

whole thing, which is the whole thing. That is the whole

thing.

Mr. THOMAS. That is the whole thing. That is the

whole thing, which is the whole thing.

Mr. SULLIVAN. That is the whole thing. That is the

whole thing, which is the whole thing.

Mr. THOMAS. That is the whole thing. That is the

whole thing.

Mr. HAMILTON. They are marked on the wooden bullets, these wooden ones, marked on the bottom.

Mr. THOMPSON. Marked on the bottom to correspond with the photographs.

Mr. HAMILTON. No, the way they would if they were correctly made.

Mr. THOMPSON. The way they would if they were correctly made.

Mr. HAMILTON. They go according to the double land. A goes with 12.

The COURT. Didn't you just say A went with 11?

Mr. HAMILTON. There, that is the way they go. A goes with 11, B goes with 12, C goes with 10. You can show just how they go by these figures around here. The minute you take the land mark that has the first top land making that double land mark upon each like that, there you will see one land cut those two, which it has to do if they went in the same gun. Then the first groove to the left cut that one, the second one to the left cuts this one.

Mr. THOMPSON. Three?

Mr. HAMILTON. This shows how they are to be compared when comparing this picture.

Mr. THOMPSON. Would your Honor mind having him show you the so-called distortion of that mortal bullet? That is a separate subject here, and I might as well finish it up, unless your Honor wants to stop.

The COURT. No. I said I would meet Judge Callahan, that is all, at four o'clock.

Mr. HAMILTON. Will you take 35? Take that now. I won't need it now and see if it is right, 35. The distortion is

Dr. Hamilton, they are members of the medical profession.

These medical men, called in the hospital.

Dr. Hamilton, about the same to the hospital.

the hospital.

Dr. Hamilton, the way they would (I think) be.

medical men.

Dr. Hamilton, the way they would (I think) be.

same.

Dr. Hamilton, they are members of the medical profession.

the hospital.

The doctor, about the same to the hospital.

Dr. Hamilton, they are members of the medical profession.

Dr. Hamilton, they are members of the medical profession.

Dr. Hamilton, they are members of the medical profession.

Dr. Hamilton, they are members of the medical profession.

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Dr. Hamilton, they are members of the medical profession.

Dr. Hamilton, they are members of the medical profession.

Dr. Hamilton, they are members of the medical profession.

found by looking at the base of it, simply flattened on one side. That he can see for himself without my pointing out. That is simply flattened out on one side. You look at it this way, look at it this way. Anyway, it is not distorted, except just on the base on one side. Simply pushed in, but not so it affects its measurements on these photographs of the mortal bullet.

Mr. THOMPSON. That is all I want to show your Honor tonight.

The COURT. Tomorrow morning at 10 o'clock.

(Adjourned to Wednesday, November 7, 1923 at 10 a.m.)

Wednesday, November 7, 1923.

Mr. THOMPSON. Before proceeding, I would like to take a moment to read to your Honor in a passage from page 19 of the Van Amburg affidavit, original affidavit, speaking of double land:

"Where a pistol barrel has a left twist as has the Colt automatic pistol, slippage when it appears on the bullet fired in such pistol is always to the right of the true land. It is caused by the bullet jumping ahead when the explosion occurs, and momentarily failing to take the rifling. The bullet 'staggers', as it is sometimes called. As the rifling takes effect the bullet proceeds in its normal course to the left and with the twist of the rifling, but the initial impression of its jump ahead is registered at the top of the bullet and slightly to the right of the true land-mark."

In other words, the place your first double land is at the top of the bullet or very nearly the top of the bullet, before it twists away from it, cuts perhaps two or three other impressions each of the same kind, and you count from that first one, as Hamilton did. That is a fixed point. That means the top of the bullet is there.

"This slippage or registering of a double land-mark commonly occurs in the firing of automatic pistols. The appearance of such mark on bullets so fired is not significant in this case."

It is a common thing in all automatic pistols. It is a

Wednesday, November 1, 1917.

For Thursday, before breakfast, I went to the
a house in order to find out how much time it
the two hours available, and the result of
the day.

There is a great deal of work to be done in
the afternoon, and it is necessary to
the house in order to be able to do the
of the day. It is necessary to be able to
which means the physical work, and especially
to be able to do the work. The house is
as it is necessary to be able to do the
of the day. It is necessary to be able to
the day and with the help of the house, and
the day. It is necessary to be able to
to the day of the day and with the help of
the day. It is necessary to be able to

in the day, the house is necessary to be able to
of the day of the day and with the help of
the day. It is necessary to be able to
of the day and with the help of the house, and
the day. It is necessary to be able to
the day. It is necessary to be able to

This is a very important part of the day.
The day is necessary to be able to
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the day. It is necessary to be able to

It is a very important part of the day.

common thing in the firing of all automatic pistols. The fact that there is a double land mark on these various pistols doesn't itself have any tendency to show it was fired in one pistol or from another pistol. But in Colt pistols, as Van Amburg says, the sudden jump ahead before the bullet catches the rifling causes that double land mark always on the top of the bullet. That is why you can calculate, as Hamilton does, the land impression or the groove in which these cuts are and tell whether it corresponds or not.

Mr. Williams I think inadvertently suggested in his argument that Van Amburg said nothing of the sort. Well, he does, and here is where he says it:

"The appearance of such mark on bullets so fired is not significant in this case."

Well, it may or may not be. It isn't the appearance of the land marks we are particularly interested to show. It is the place they occur and what causes them. They are on the top. That gives you your point of departure. That fixes the proposition that the one cut in this mortal bullet is not in the corresponding place with the two cuts or three cuts, whatever you see fit to call them, that are in the other bullets, in the test bullets. That is a very significant fact, the fact it was not mentioned at all by Mr. Williams in his reply to me and has now been demonstrated to your Honor.

Furthermore, your Honor has seen right through the microscope on the mortal bullet that there is no second cut at all, only one cut there, whatever the photographs may show -- different degrees of magnification and illumination and all that sort of thing -- when you look at the object itself

there is only one cut there and you can't find a trace, as Mr. Hamilton says, of any other one.

There are two arguments. First, one cut as against the three, irrespective of whether they are in corresponding places or not. Assume they are in corresponding places, one cut in one, two or three in the others. I say three. Makes no difference whether there are two or three. I feel quite sure there are three in all of those test bullets.

That last is of great importance as distinguishing the guns through which those bullets were fired. But there is an even more important proposition, even if you get over that difficulty and make the three one and one three and try to make them alike and say this is mere accident there weren't two more on the mortal bullet and so something happened. Still, if they are not there they ought to be there on the mortal bullet. That is the argument of Mr. Williams. There ought to be two more on the mortal bullet if they aren't and we assume they are and that correspond to the three on the test bullets.

Suppose you get over that. You still are confronted with the same difficulty that the three cuts in the test bullet are not in the same corresponding space as the one in the mortal bullet. That is a trouble you can't get over it. Here is the proof. It always occurs on the top, right in their own affidavit. You would hardly need an affidavit for it anyway because common sense would show that bullet is in a stationary position. It has inertia which meets this tremendous propelling force behind it of nine or ten thousand pounds to the square inch which works with inconceivable

rapidity. Nevertheless, the force which the physicists call inertia is there, and it has got to be overcome, and in the process of overcoming that inertia there is an infinitesimal fraction of time before the bullet, while it is moving but before it gets the twist, gets those scratches. After it gets the twist it begins to revolve and there are no more double lands. It is in the lands by that time. It gets those just before it enters and takes those lands. That is what causes it.

Now, Mr. Hamilton, if you will proceed, because we want to get through as much of this as we possibly can this morning. In the first place, before we go onto the minute details, I would like to have you take a look at that microscope Mr. Williams produced here and state, if you are not prevented from doing so, what it is and what its condition is in reference to this kind of examination.

The COURT. Let me ask this. May I have the privilege of having both of them?

Mr. THOMPSON. Certainly. No objection at all. That one can be made all right. It simply is not arranged now for this kind of work. It can be made all right.

Mr. HAMILTON. They are both international screw. That means the screw ---

The COURT. I suppose they both to look at are about the same.

Mr. THOMPSON. It makes all the difference what your objective is.

The COURT. As they are adjusted.

Mr. THOMPSON. (Continuing.) What the degree of magnification is.

The COURT. Perhaps I had better have both, anyway.¹¹⁰⁷
I would like to have them both properly adjusted so there will be no question about that.

Mr. HAMILTON. I can just explain so that you can see for yourself what you want to use. For instance, on the one supplied by the district attorney, there is a No. 5 eye-piece, that is an extra long, that is a very low power eye-piece against an oil immersion of 4 millimeter, and high power objective used for blood corpuscles and disease germs. The other objective is 16 millimeter, which is also for pathological and medical use. The instrument as now loaded is for pathological and medical use. By taking off either one of these objectives and putting on a 48 millimeter, which is coarse, and removing the eye-piece and putting on the one-inch eye-piece that has been used as a simple microscope ---

The COURT. That is what I understood, this here.

Mr. HAMILTON. Yes.

The COURT. That is what I understood.

Mr. HAMILTON. Then it would be equipped for use.

The COURT. It is all right now as it is?

Mr. HAMILTON. It would be if you put the 48 millimeter objective in place of either of those that are on there now and swing it into its position.

The COURT. Supposing you adjust it.

Mr. THOMPSON. He will have to use his own 48.

The COURT. I see, that belongs on yours?

Mr. HAMILTON. Yes, sir, that is my own. Either one, either stand can be used. It is a matter of convenience. This has the horseshoe foot interchangeable.

Mr. THOMPSON. What is the reason with the high objec-

tive that is not suitable for this kind of work?

Mr. HAMILTON. It makes an over-magnification, and what you are looking at is distorted by its being made too large. And another thing, in using either microscope the draw slide should be drawn to 160, which is graduated on this black scale. That should be set at 160. I will now set it at that place, and should be placed there the same as this one is placed at 160. That gives the proper distance between the eye-piece, the eye-piece and the objective.

Mr. THOMPSON. Now, you better take your objective off because I want to use that.

Mr. HAMILTON. No, this is mine here.

Mr. THOMPSON. All right.

Mr. HAMILTON. This black objective upon mine is a special objective for double use on the microscope, and it is also for a high power camera. It has a shutter so that you may, you can see the little iris in there. It is now closed, or by turning that, the little iris closes, shutting off the amount of light you may want for illumination; by turning this, and there is the scale for photographing -- graduated from 1 up to 45 -- and it is interchangeable; can be used on a microscope where you want a graduation of your light or used for photographic purposes, either one.

Mr. THOMPSON. That is not on the other one?

Mr. HAMILTON. That is not. That is a special application.

The COURT. It is understood then that I may have both instruments properly adjusted for my use.

Mr. HAMILTON. You can use mine.

The COURT. All right.

Mr. HAMILTON. I will leave the whole case.

The COURT. The government has already stated I could have this one.

Mr. HAMILTON. You can use this.

The COURT. I can have both .

Mr. HAMILTON. I have four others. I can use my others.

Mr. THOMPSON. What is the value of one of those microscopes?

Mr. HAMILTON. I don't know what they are now.

The COURT. Perhaps I might not want to use it.

Mr. THOMPSON. I thought I would like to find out.

Mr. HAMILTON. Originally, \$125.

The COURT. How much?

Mr. HAMILTON. \$125. But that is without the special objective. As it stands it would be about \$175.

Mr. THOMPSON. Now, then, let us get back on the work we were on. When we stopped, the court was measuring with a pair of fine dividers certain distances on some of the photographs introduced here by the government.

Mr. HAMILTON. The Bridgeport.

Mr. THOMPSON. The Bridgeport photographs. If I can have those again, I should like to have them a moment. Will you just pick out as soon as you can the photograph the Court had there, because I am wholly unable to do it. Those little dividers,-- yes, that is it.

The COURT. I could not pick them out if you asked me now.

Mr. HAMILTON. I will take the top.

The COURT. I may have done something that had no significance at all. Something came over my mind, that is all.

Mr. HAMILTON. I will take the Court's dividers.

Mr. THOMPSON. I want to have it appear just where the edges of those land marks are you measured from.

Mr. HAMILTON. This is the mortal bullet. I will point out, and the Court can measure as he sees fit. I don't want to. Now, the proper measuring is to first find the base line as near as you can of the bullet proper and put a straight edge across there. Here is a shadow. It is so hard to find. This is one location; that is another. Put a straight edge on that, and the edges, the true edges of the groove as shown in this photograph are on the right, that straight edge coming right up.

Mr. THOMPSON. That white line?

Mr. HAMILTON. The right side of that white line and the left hand edge of this groove is that fractional white streak up through there.

The COURT. Which one do you mean?

Mr. HAMILTON. I mean ---

The COURT. This one right here on the inside?

Mr. HAMILTON. No, I mean that one right there, that one right there, right there. Now, we lay this right angle triangle against that edge. Now, that follows the straight edge of that land. You put the rule on the bottom, and immediately it is at variance with the picture, because that appears to be the bottom of the bullet, and yet this is below that. I move it over and I see that this still does not run true with that when I take that straight edge so that shows that the bullet did not stand perfectly true when photographed. By testing it out it does not stand perfectly true. Otherwise, if it was perfectly true that put against the bottom of the

bullet and this against there should form a correct angle and not there be off. Now, in measuring its width, you measure across parallel with the base and you can do it with your eye, or better, measure up a given distance, go up say one inch and a half, go across an inch and a half or go up two inches, wherever you want to measure. If you should measure on one, for instance, an inch and a half up this side, an inch and three-quarters up, not watching what you are doing, and then put it straight across here you will get unequal measurements. One would be straight ---

The COURT. What kind of a rule do you call that?

Mr. HAMILTON. This one?

The COURT. Yes.

Mr. HAMILTON. Starrat, L. S. Starrat Company's standardized flexible six inch steel rule graduated in hundredths of an inch, and can be obtained in any good hardware store handling Starrat's instruments.

The COURT. An L. S. Starrat I know very well in Athol.

Mr. HAMILTON. That is the concern. They are the makers of it. They come flexible like this, which are thin, and then one that is stiff. The stiff ones are not suitable, because you cannot get down close.

The COURT. Flexible?

Mr. HAMILTON. Yes, sir.

The COURT. Now, you just wait a half minute, please.

Mr. HAMILTON. I will leave you this rule.

The COURT. No, I don't want to do that.

Mr. HAMILTON. These flexible rules come in different lengths, four and five.

The COURT. Thank you.

Mr. HAMILTON. Now, in measuring, care should be observed that what appears to be a cut on a photograph may be, when you examine the bullet from which it is taken, may be an elevation. For instance, in this photograph "A" that is a roll of metal on the right side of this groove mark. What appears on the left is a depression or a cut into the metal. At any time when in doubt, immediately put the original under the microscope with the proper magnification and check up the photograph from what the original shows; and remember this in the use of the microscope, that it isn't the high power that tells you best. The rule is to use the lowest power that gives the clear definition and not the highest.

The COURT. Would it not be the best way to use that part you can see the best with?

Mr. HAMILTON. That is exactly what you do. You use those that give you the clearest view. There will be times you will want to use the 16 millimeter, but -- and photograph 2, where I showed you that the dried blood had broken off. Now, if I had thrown it under this higher power and used illumination I could have shown you the actual cleavage where it had cracked off, and shown you the structure of this dried blood on here. It appears as scratches. So just a little practice and you will have no trouble at all, just a few experiments. Now, in my case that I leave there will be two eye-pieces, one longer than this. You will find this one that is marked "10" is the eye-piece, and the 48-millimeter eye-piece objective will give you the most all-around vision of everything in the nature of this kind of a case. Occasionally you may want to use this higher power, but unless you are familiar with it you will have to look out for distortion

Now, by tipping it a little it appears only in the bottom groove. Tipping it in the opposite direction it is only in the top groove. In other words, you simply see what is in focus. What is out of focus this side of it is smooth. What is beyond the focus is smooth.

Now, to guard against seeing something that does not exist, you simply take your magnifier and begin and put the focal length at the muzzle and slowly go down until you have gone clear to the depth. Then you see everything in that groove from muzzle clear down to the focal length of the instrument you are using. You might just try that and see how you can make a rust spot according to the distance you hold it from the muzzle, and I will hold this in front. Get it closer to the muzzle. Put it right down to the glass. That is it there, first. You see now your rust spot extends clear around and it is an inch and three-quarters down in the barrel. Now, slowly draw it away and you will see the rust spot follow you up towards the muzzle, see it come.

Now, I explain that so that you won't lead yourself astray in using any kind of a magnifier. Now, if you suddenly take your magnifier away and look with your naked eye in there you will see where what looked like a rust spot looks smooth, just a little dark color; without understand^{ing}/that, of course, a rust spot could be in any place that you happen to look with a focal length.

Mr. THOMPSON. Is that barrel the same now as when you looked through it first?

Mr. HAMILTON. Just a moment. Now, find what I just pointed out with the use of the magnifier. Looking right into the muzzle you will see that the bottom of the grooves are of

all them dark colored and rough as you move your focal length up and down, but if you try it on top of the lands, you will observe this condition: that after you get down upwards of three quarters of an inch, you then strike rusted lands, but from there to the muzzle all the way around they are clean, and if you take this land that I am now looking at, which is the land at about 8 o'clock at the muzzle, you will see the little scratches on the face of it where something has impressed in there and made the top of the lands bright and shiny,-- all six lands. Then right at the muzzle itself you will find the bottom of the grooves are shiny.

Mr. THOMPSON. Was that the way it was when you first looked at it?

Mr. HAMILTON. Oh, no, no. I want to just caliper that one. May I have those two Colts of mine over there, please. I made a mark where that went down into the Sacco. Now, let me have the other. This is a small bore.

The COURT. Same bore as the other, isn't it?

Mr. HAMILTON. Very close to the other. That is 1, 2. This is Sacco. Now, Sacco is larger than either of these. When I examined that in April it was smaller than either of them. I have the measurements.

The COURT. Is that due to rust?

Mr. HAMILTON. No. Something has been in the muzzle of that and now the bore is clean so that a taper can go in it deeper.

Mr. WILLIAMS. If your Honor please, may I raise this point at this time, that if Mr. Hamilton is going to make statements of fact apart from what I conceive would be the

ordinary pointing out of matters to your Honor, it seems to me he should be sworn and be under oath.

Mr. THOMPSON. Perfectly willing; perfectly willing. Glad to have him.

Mr. WILLIAMS. I had assumed he was simply pointing out matters to your Honor, but I observed yesterday and this morning he is going somewhat far afield, and while I do not want to be in the position of objecting to anything your Honor desires, I feel that if he is going to make statements of this kind they should be in such form they are either for us to answer or not, that we may have an opportunity to answer,

The COURT. I am going to give you a right to answer.

Mr. THOMPSON. I would be glad to have him put on and give you an opportunity to cross-examine him to the fullest extent.

The COURT. I want you should look at that one (indicating).

Mr. HAMILTON. Did you mark it?

The COURT. I have gone -- you have marked it.

Mr. THOMPSON. Is that your knife?

Mr. HAMILTON. No, I was looking for my glass. Now, mark that where you had it. Where is the other mark?

The COURT. About the same, aren't they?

Mr. HAMILTON. I want to get it on the same side. I will mark it right there.

The COURT. They run into each other.

Mr. HAMILTON. On that side. There.

The COURT. Let me have a new ---

Mr. HAMILTON. Here is one. Try it with this one.

(The court makes experiment with pen holders.)

Mr. THOMPSON. When you saw that pistol in April, the end

of the barrel was -- about an inch down or three quarters was not in the same position it is now, was it?

Mr. HAMILTON. It was not, no, sir. It was clear to the muzzle. It was just as it is way down, all covered, corroded.

The COURT. In other words, it is because they do not look the same, the muzzle doesn't look the same now as it did then?

Mr. HAMILTON. No, it is bright.

The COURT. You don't mean it depends wholly on the measurements I have just made and that you made?

Mr. HAMILTON. Your measurements you made now are dependent upon its present condition, not its condition then. I have its measurement then. It is already in my affidavit.

Mr. THOMPSON. In the affidavit?

Mr. HAMILTON. Yes.

The COURT. Let me have that one you first had, the pistol.

Mr. HAMILTON. That is yours, and this is the first one.

Mr. THOMPSON. Aside from the measurements, the barrel was then dirty way down to the muzzle, and now it is not.

Mr. HAMILTON. Now it is not at the muzzle.

The COURT. May I have these?

Mr. HAMILTON. I have a steel taper I could sent down. It is in Auburn -- for the purpose of doing this. This is a steel taper, and I can sent it down.

The COURT. I do not think it is necessary.

Mr. HAMILTON. It is graduated in thousandths of an inch.

Mr. THOMPSON. Well, now, let us get ahead with this if we can. Now, I want you to take up the knurlings; the question of knurling was mentioned by Mr. Williams. Under the compound

microscope just show the knurling on the six bullets taken from Sacco and compare it with the knurling on the mortal bullet. Then turn to page 7 of the original album and show how you use the protractor to determine those angles. Mr. Williams says there is no difference or that the knurling got all shifted by going through the pistol, or something like that. The mortal bullet and six bullets taken from Sacco, Exhibit 34. Here is your protractor up here, I think.

Mr. HAMILTON. Yes, but I want a pin.

Mr. THOMPSON. Is that the mortal? That is the mortal.

Mr. HAMILTON. Put it where it won't get lost. First take the photograph of the bullet and draw a line in exact horizontal to the perpendicular of the bullet, which is determined by a protractor. Next make a pin hole in that line in alignment with the side of the land mark and place the protractor pin and center it in that hole. Now, the pin is in the little hole. Take the base of the protractor, which is 180, the diameter, and move it until it is in alignment horizontally. Then swing the movable arm over until it exactly comes in alignment with the knurl adjacent to the side of the groove. Now, rest it that way. Then take your magnifier and at the top read off the degrees on the semi-circular scale that corresponds to zero on the movable arm. The arm is now in alignment with the knurl and you read off up at the top three degrees to the right of the perpendicular. On the photograph up here these hair lines scratched correspond to these different knurls. This ink line on the photographs is the line drawn parallel with this movable arm which is now at the three degrees. Now, that is the mortal bullet. Now, the same

test is made by taking one of the Sacco cartridges, finding the true horizontal with the perpendicular vertical and finding its exact center, making the pin hole and doing the same test, and that is exactly in horizontal. Have to be careful not to move it. You swing the movable arm up until it comes in alignment with the knurl. That is right at the top of that knurl; and read off at the top of the scale. I have done it hastily, and it is one-quarter of one degree as I have set it at this moment; but when it is accurately fitted it is exactly 90 perpendicular, and I have drawn the ink line to represent the direction that those knurls are on the cartridge.

Now, that is one of the ways it is done. The other way it is done is by taking the microscope shown on page 19 which has a mechanical stage. This mechanical stage has a protractor arrangement. The entire circle is a protractor and can be revolved and the angles read off in the eye-piece just the same as you are doing it more coarsely with the ordinary protractor. It can be done with a microscope the same way. With that it can be read off on the bullets themselves by fastening it upon the stage and getting the hair lines up in the eye-piece in alignment with the vertical center of the mechanical stage.

Mr. THOMPSON. Now, let us see one of those Lowell Sacco bullets, because Van Amburg says there wasn't enough visible on any bullet to do that which you have just described, not enough knurling. Have you got those, exhibit 31? No, 34, I think, six bullets taken from Sacco.

Mr. HAMILTON. These were photographed all with the trade mark in front so as to localize that portion of the bullet with these photographs. I won't attempt to put them in their

respective places.

Mr. THOMPSON. Just show one with the glass so he can see there is enough to put into the microscope to do what you have described, that is all. Van Amburg says there isn't enough visible under any microscope or otherwise. That is all I am now interested in, to meet that statement of Mr. Williams that there isn't enough knurling visible to make any determination whatever.

The COURT. Can I see it with that glass?

Mr. HAMILTON. You can, but ---

The COURT. I would save some time if I can. If I can't, let's go here.

Mr. HAMILTON. It will show better right here. It is too high power. I should have to change it. There, now, all right. See, it is focused. It isn't right.

(Mr. Williams makes examination.)

Mr. THOMPSON. I would like to take a look at that (examining). Now, that is enough for that, for that isn't after all a very important point. Now, we come to the firing pin imperfection, Mr. Hamilton, the firing pin imperfection on Sacco's firing pin, which is claimed to be registered in these Fraher shells. First, I would like to have you show the little pentagon formation on the apex of the Sacco pistol firing pin which is registered on the three Lowells and not on F-4.

Mr. HAMILTON. Would you take this before somebody destroys it (handing to the clerk)? I will have to show that on the photograph, because I can't put that under the microscope.

Mr. THOMPSON. Is there any way you can pull that pin

out of the Sacco pistol?

Mr. HAMILTON. It can be taken out, yes, but it would be,-- a mechanic would have to take these two pins out. This would have to be drawn out by a repair man, and then this pin carrier taken out.

The COURT. That can be taken out?

Mr. HAMILTON. It can be taken out, yes, but it is a machinist's job.

The COURT. A little beyond the court's ability.

Mr. HAMILTON. I meant to bring out--Turner has a lock to bring that out. Here is the thing. On the end of the pin.

The COURT. Your finger is just back of it.

Mr. HAMILTON. Yes. On the pin end in this photograph on page 12, will be found a collection of little white specks which appear in the form of a pentagon.

The COURT. What?

Mr. HAMILTON. A pentagon, a five-sided figure. And that pentagon formation on the extreme tip has been registered in the bottom of each of the bottom dents, firing pin dents, upon the three Lowell shells. The Court can examine those at any time and see them for himself.

Mr. THOMPSON. I would like to have the court see that.

Mr. HAMILTON. And see that they exactly correspond with the formation. Those are right in the very center and the bottom, those little white spots, that little formation, pentagon formation in the center. In the Fraher a different formation. Look through the very center of the glass.

The COURT. Now, where is the mortal bullet?

Mr. THOMPSON. Do you mean the Fraher shell, Fraher 4, and the three Lowell test?

The COURT. You have a photograph, have you not, of the Fraher shell?

Mr. HAMILTON. Yes, sir.

The COURT. Let us look at that.

Mr. HAMILTON. This is the Fraher.

The COURT. That is what I was thinking of.

Mr. HAMILTON. This is the Fraher shell there.

Mr. THOMPSON. You have a big one, but I think that is the only one shows the inside of the primer. Isn't it or is it?

Mr. HAMILTON. Well, page 16 will be better for this. 16 is focused in the bottom.

Mr. THOMPSON. Then, why don't you turn to 16?

Mr. HAMILTON. Well, he is busy. These are the three test. This is the Fraher.

Mr. THOMPSON. Turn to the place where you see them best.

Mr. HAMILTON. He has it now.

Mr. THOMPSON. Oh, I beg your pardon. Is this 16?

Mr. HAMILTON. Page 16.

(Mr. Williams makes examination.)

Mr. THOMPSON. Now, can you show the difference in widths and length? That is very important. It has been denied there is any difference in length and width whatever. It is claimed your photographs are misleading in that respect. Perhaps you better show it under the compound microscope.

Mr. HAMILTON. It depends entirely on what you are measuring. You see, you have here the photograph of the little slit. Above it is a swedge mark. The upper one is the swedge mark. Where is the little primer I left here, that little primer? (The clerk hands primer to Mr. Hamilton.) I can show it better and quicker in one of these. I do not know whether

I left one yesterday or not. There is a swedge mark on there. This is it. Holding it so your fingers hold it just in that plane.

The COURT. Put it right in my hand just as you want it.

Mr. HAMILTON. Now, get the focus right and you will find - wait just a moment. Closer, up -- down upon what would be about 1 or 2 o'clock is a swedge mark made when the primer is pushed into the shell near the rim.

The COURT. Give me a pencil, see if I get what you mean, right there.

Mr. HAMILTON. That is right, right up on that side; that is made when ---

The COURT. There are two marks there.

Mr. HAMILTON. There are three.

The COURT. There is one.

Mr. HAMILTON. They are circular cuts.

The COURT. There is one right there.

Mr. HAMILTON. You are on the shell. Get on the primer, the part that has the "W" on it.

The COURT. Now, what do you want I should see?

Mr. HAMILTON. That is right toward the light now. Put your pencil mark until you come and get to the spot right there, right in there. Now, you pointed right at it, right up in there. That is a swedge mark. Now, between that and the "W" are little circular cuts made by the machinist that punches out the little cap. Those are on practically all these primers of that age and have to be looked out for in examining an exploded shell and not confound them with firing pin dents. Those I will leave if you want to look at them.

Mr. THOMPSON. Now, let us take the Frasers.

Mr. HAMILTON. Wait until I put this up so it won't get lost.

The COURT. Put those in an envelope and mark them, mark them "Mr. Hamilton's -- left by Mr. Hamilton with the Court."

Mr. HAMILTON. Winchesters.

The COURT. Winchesters.

Mr. HAMILTON. Now, where is the Fraher?

Mr. THOMPSON. Now, the Fraher and the three Winchesters.

The CLERK. I think that is a Fraher, isn't it?

Mr. THOMPSON. Is that the Fraher?

Mr. HAMILTON. Yes, this is a Fraher.

Mr. THOMPSON. Is that the Fraher?

Mr. HAMILTON. It looks like it.

The CLERK. It is a Fraher.

Mr. HAMILTON. This is one. This is F-4. This is the one. I recognize it.

Mr. THOMPSON. Now, the three Winchesters, Mr. Clerk. This is quite important.

Mr. HAMILTON. I have to get something to lift that up a minute. Are these marked so if they are taken out they won't get mixed? Well, I can keep them separate by keeping them together here. Now, what is it you wish me ---

Mr. THOMPSON. It is claimed when you said the length of that mark, if there is any mark, that corresponds to the Fraher firing pin imperfection on the Fraher was 60 one-hundredths of an inch on the Loweel and 25 -- or vice versa -- I don't know which, that you make a misstatement, and that there is no such difference at all, that they are the same length and same width. I would like to have you demonstrate with your microscope to the court that that statement is not

true and that your original statement is true. In other words, I want to show the Court by ocular demonstration what you said in your affidavit is correct, and that I have alleged in my argument. Mr. Williams said something about you claiming one is twice as long as the other. I think your claim was one was 60 and one 25. That would be a little more than twice.

Mr. HAMILTON. Let me get it in its correct position, as it is in the gun.

The COURT. Right?

Mr. HAMILTON. No, I am locating the gun so as you look at it it will be straight for you.

Mr. THOMPSON. I do not believe it makes so much difference whether you can exactly locate it, as long as it is visible.

Mr. HAMILTON. Well, I want to get it so the Court sees it correctly.

The COURT. That is proper.

Mr. HAMILTON. Now, it is right. Now, you will have to be particular to focus it exactly. Now, come this way just a little, around like that. Now, it begins immediately towards your body.

The COURT. Put your finger down where ---

Mr. HAMILTON. At your left. It begins on this side right in there near the top and extends ---

The COURT. I don't see your mark at all.

Mr. HAMILTON. It is inside of this hole.

The COURT. The little hole inside?

Mr. HAMILTON. In the hole near the top near the surface it begins. What would be nearly the bottom. It extends to your left around up the left side. Now, I will change the light

so that you could keep following it. The illumination extends almost a semi-circle as I go around with the light. Now, I will bring the light back. Now, not only can you see it on nearly the opposite side where you first saw it -- Now, I should explain at this time as you are now seeing it, your view makes the shell bottom side up. The microscope reverses it, because I have fixed the shell just as it is in the gun. What you see at your -- what you see now at your lower left hand on the shell itself is at the top right due to the microscope reversing it both vertically and horizontally. Now, I will move the light around and you will see this same elevation follows around. Now, you see it at the top and at the right nearly a little at the right of the top, but on the object itself it is just the reverse of that on the lower left. It makes nearly a semi-circle as I follow the light around and give you a view of it.

Mr. THOMPSON. Does your Honor see that? That is pretty important.

The COURT. I see it.

Mr. THOMPSON. You take one of the Lowells, you did not see anything about the depth. I thought you were going to wait for that until later, but there are two aspects of it. I would like to see that, too.

Mr. HAMILTON. While he is right there you might show him to save time, the ejector mark. It is right there, just move it a little.

Mr. THOMPSON. I wish you would. Let me take a glance. I don't want to take up your Honor's time out of curiosity, but I would like to look at this thing.

Mr. HAMILTON. See, it is on the lower left hand side near the top. Move it around and you will see it coming in view clear around. You can see with improper illumination it would only be about half as long.

Mr. THOMPSON. I can't see that very well. I can see where it starts.

Mr. HAMILTON. Now, follow right around.

Mr. THOMPSON. Yes, it is coming off. I see more than a semi-circle.

Mr. HAMILTON. No, it is just scant of a semi-circle.

Mr. THOMPSON. I hope your Honor saw it better than I did. I saw it.

The COURT. I saw what he pointed out to me. I don't know what it is.

Mr. THOMPSON. Now, put a Lowell in there and let us see that.

Mr. HAMILTON. While you are right on this, I was going to give him the ejector mark. It is right here.

Mr. THOMPSON. All right. Show the ejector mark. There has been a lot of talk about that.

Mr. HAMILTON. I am fixing the shell now so that it will appear right side up to your eye. I do that by reversing; just turning the shell around.

Mr. THOMPSON. It seems to me, incidentally, your Honor, this evidence is both newly discovered and not cumulative, as far as I can make out.

Mr. HAMILTON. Now, I have arranged it so that to your eye the shell will appear just as it stands in the gun. On the left edge of the shell just below the letter "E" appears the top right hand corner.

The COURT. Put these right where you want I should look.

Mr. HAMILTON. You have no trouble. You just look for all of the material between the "R" and the "W", and remember that the little spot between the "W" and the "R" is a period, and that the left of that on the edge you will see without ---

The COURT. You can see it. Put yourself right down where you want I should ---

Mr. HAMILTON. Get the area; right over in there.

Mr. THOMPSON. Now, explain what it is you want the Court to notice in respect to what has been said about that ejector mark.

Mr. HAMILTON. That is the remains of the right angled triangular formation of a Colt ejector, and I was looking particularly at the corner dent up in there and its failure to cut across the edge. It is simply a dent in the metal, but it hasn't cut across.

The COURT. I discovered it. Let me take this so that I get just what you mean.

Mr. THOMPSON. Then that little triangular corner that makes these marks, whatever they are.

Mr. HAMILTON. Now, you are coming down toward it, lower down with your forceps and towards you, across. Put it towards you -- too far. Let me help you.

The COURT. Let me steer that.

Mr. HAMILTON. Now, right there, down a little bit, pull it back a little bit, right under there, right under it now.

The COURT. I got it.

Mr. THOMPSON. I got the period. Now I get the corner, and nothing ---

Mr. HAMILTON. No cut.

Mr. THOMPSON. No cut across. Yes, I see that, and I see

that but the corner mark goes, apparently there is a part of a cut across at the bottom of that mark looking as if that upper mark had nothing to do with the ejector, not a bit. It looks as if what we had been talking about as a corner mark was not the corner at all.

Mr. HAMILTON. Well, all that is recorded there of the ejector mark is that abrasion, that irregular abrasion, with little file marks in it. That other is in the location where the corner would be. The Court should compare that corner with the corners on these shells. I do not want to volunteer anything.

Mr. THOMPSON. I do not believe any one will object.

The COURT. Let me hear it.

Mr. THOMPSON. What is the explanation? Mr. Williams made a lot of talk about that mark as being a corner mark. As I look at it it apparently hasn't anything to do with the ejector at all. It may be.

Mr. HAMILTON. The only ejector mark that appears here ---

The COURT. I understood Mr. Hamilton to say that was an ejector mark.

Mr. THOMPSON. I do not know whether he did or not. I think he assumed a lot that way on the theory of the government.

Mr. HAMILTON. Let me localize it. This abrasion of the metal or curved parallel lines at the left of the "W", between the "W" and the rim is all ejector mark.

The COURT. That is what I understood.

Mr. HAMILTON. Yes, that is plainly seen, I think.

Mr. THOMPSON. Yes, yes.

Mr. HAMILTON. Now, this other cut that is up above it remote, the most I would say of that, it could be an imperfec-

tion on the corner of the ejector mark that made it; but there is no cut across, there is no cut down from that spot to form the right angle.

Mr. THOMPSON. I see that plainly. Now, put a Fraher under there, will you, and show the difference. That is the best test of all.

Mr. WILLIAMS. The Fraher was under there.

Mr. THOMPSON. I mean, put the Lowell, put the Lowell.

Mr. HAMILTON. I will use the one I think that has been used by Van Amburg No. 3, if I remember rightly.

Mr. THOMPSON. Yes, that is the one. I can't see what else made that cut, unless it had something to do with the ejector.

Mr. HAMILTON. Well, I have an opinion, but I am not here to give you opinions.

The COURT. Only by your affidavit. The object of this, I supposed, was to point out, to show me.

Mr. THOMPSON. That is all.

The COURT. The different things that you claim in your affidavit.

Mr. HAMILTON. Now, on this Lowell Van Amburg No. 3, a complete right angle, triangle ejector dent, its entire perimeter, the base, the long side and the curved hypotenuse is all visible where the ejector has cut into the metal and made a depression.

Mr. THOMPSON. That is what is important. That is the important part of this thing.

Mr. HAMILTON. It is between the letters "A" and "C" I think. Pardon me, turn your body a little this way and then you are square with it. That is it.

The COURT. Put it just where you mean so I will be sure I know what you have in mind.

Mr. HAMILTON. Right at the end of that. Am I getting it in the right spot?

The COURT. Now you are away out on the edge.

Mr. HAMILTON. Pardon me, I moved it a little.

The COURT. You pointed at another thing at first. Then you worked out onto the edge.

Mr. HAMILTON. Let me see if I have moved it too much and got it back in the center.

The COURT. I can see it distinctly. Which is the ejector mark?

Mr. HAMILTON. On the upper metal at the extreme edge. Am I getting -- I am trying to get it now. Right up there is the top. That is the right angle. That is the short, or base, and down this way is the long side and the curved contour.

The COURT. What do you say that mark is nearer the center?

Mr. HAMILTON. Near the center. I will tell you. I saw that. That is a foreign mark; has nothing to do.

The COURT. Made by what?

Mr. HAMILTON. I could not tell you. There are more down toward the "A". You will see some more of them. Those are marks, accidental, that you will find.

The COURT. Let me look at the Fraher now for that same mark.

Mr. THOMPSON. Can I look at that before you change it? I have never seen that Lowell test (making examination)

The COURT. You may see it also, if you desire, Mr. Williams.

Mr. HAMILTON. I will put them both right there.

Mr. THOMPSON. That is what I wanted you to show, the striking difference between those two things.

The COURT. That is just right. Back again. Let me see the other now.

Mr. HAMILTON. Tell me when to stop.

The COURT. Now. Have you got the relative distances of those marks on each from the outside of the letter "C"?

Mr. HAMILTON. That is from the rim to the inner edge of the mark?

The COURT. Yes.

Mr. HAMILTON. I did not take that. That varies on -- that varies so on a given gun that I paid no attention to it.

Mr. THOMPSON. Now, am I right in asserting -- if so I want to assert it now -- that there is a marked, obvious dissimilarity between the ejector marks on the Fraher and Lowell? I assert that to be so from what I myself have seen.

The COURT. I know, but you are not quite a witness yet, though I am going to give you credit for being an excellent witness, Mr. Thompson.

Mr. THOMPSON. I am using that -- I want to use that as the premise of an argument that you have seen the difference there.

The COURT. I understand that is what Mr. Hamilton claims.

Mr. THOMPSON. I don't care for his claim.

The COURT. Well, that is what he says.

Mr. THOMPSON. I want it to be clear that whatever is there you have seen.

The COURT. I have seen very distinctly.

Mr. THOMPSON. You have seen very distinctly both ejector marks on both those shells, what is present in both, not what is absent in one and present in the other. I see, for instance, no straight mark above the ejector mark apparently or disassociated with it on the Lowell.

The COURT. We will take our morning recess now.

(Short recess.)

Mr. THOMPSON. Now, I want to come to the bushing marks; in the first place, 12,000 pounds. I make this statement by way of argument. 12,000 pounds, I think may be assumed to be six tons. If I am not mistaken, 2,000 pounds per ton. That makes a pressure of six tons to the square inch. Now, you can make a mark on this brass with your hand by 10 pounds to the square inch. The pressure you exert in scratching one of these pieces of brass isn't 10 pounds. It might be 25 perhaps if you pressed hard. The argument was suggested a difference in pressure would cause, in two different shells, would cause the marks to be registered coarser on the Fraher and lightly on shells of the same make, namely, the Lowell shells. That is to my mind perfectly preposterous. Half of six tons, three tons would be enough to cut it for all it was worth. 25 pounds would be enough. There is nothing in that at all.

Now, I want you to take the machine marks, Mr. Hamilton. This is very important; and point out to the Court -- first point out the fallacy of the so-called -- the method of so-called point measures. I want you to do that first. That is a well known method of point measurements which has been discarded long ago by competent experts, and I want to show your Honor why it is of no use. Handwriting experts and lots of others used to use this method of point measurements.

Mr. HAMILTON. I have on a piece of paper two imprints marked "paid," rubber stamp impressions. "Mar." abbreviated by marks. Now, in comparing those two by point measurement process ---

Mr. THOMPSON. Were they made by different stamps?

Mr. HAMILTON. I haven't reached that far.

Mr. THOMPSON. All right.

Mr. HAMILTON. There are two rubber stamp impressions of the same material. There are 465 different point measurements that can be made in comparing the two with a pair of dividers and in all those 465 times they will be the same on the two stamps. The question is does that process show that they both came from the same stamp, because there are so many similarities. Now, as to whether they did or not it can be easily determine by just one microscopical examination, and that is "i" in paid. Your Honor want to look at it, and you won't need anything from me. I am showing you the upper one first, the shape of the letter, top and bottom. I am showing you now ---

The COURT. Wait a minute.

Mr. HAMILTON. Oh, I beg your pardon. The shape of the "i", its width at the bottom and at the top. Now, I show you the other one, the shape of that "i", and their dissimilarity shows at once that a different rubber stamp made the upper one from what made the lower one.

Mr. THOMPSON. And that is the fact.

Mr. HAMILTON. And I have the two rubber stamps which I leave to show this experiment. One is marked on the base "No. 2" and "No. 1." No. 1 made the upper one with the wedge shape "i" and the No. 2 rubber stamp made the lower one with the curved sides at the top and bottom of same. By this other process of comparison of individual letter I am able to see they are made by different stamps, whereas with the point measurement, 465, on the rule of probabilities would assume they were made by the same stamp.

Mr. THOMPSON. Show some of the point measurements.

Mr. HAMILTON. Oh, well, the Court can do that. Take the top of the "a."

The COURT. I see just what you mean.

Mr. HAMILTON. In other words, you start at the bottom of the "M" and go to all the other points and you have 30 places to measure to. You begin at the top and you have 29 points and so on down until you have a pair and under the rule of computations -- it works out $A \text{ plus } L \text{ divided by } 2, \text{ multiplied by } N$ gives the total 465 number of comparisons that can be made that are identical.

The COURT. Would you claim you would have to resort to the microscope to see the difference between those?

Mr. HAMILTON. I wouldn't. The naked eye would see that. The only thing to resort to is a critical observation. The microscope is not necessary, but you note here with your naked eye the two "i" are dissimilar. These same two stamps, I might add, if you take and press them down firmly then the two "i" will print very closely alike. It is just by lightly touching them that you get the dissimilarity. They are five and ten cent store make.

The COURT. The same make?

Mr. HAMILTON. I don't know. I bought them in Woolworth's on State Street. I suppose they are. They came out of the same bin in the store.

The COURT. The same make "Front. U. S. A."

Mr. HAMILTON. Now, your impression you made corresponds with the upper one.

The COURT. Let us see. Is that right?

Mr. HAMILTON. I think so. No, I think that reverses it. No, it has been moved. That has been moved. That is all right.

You see, the point measurements would be ---

The COURT. Wider on that one at the base.

Mr. HAMILTON. Yes. You will find point measurements would lead you astray.

Mr. THOMPSON. Now, show the differences, the essential differences.

Mr. HAMILTON. You want now to show the slippage, the point measurement as applied to possible slippage of the block?

Mr. THOMPSON. I want to show ---

Mr. HAMILTON. How to determine whether the block has slipped?

Mr. THOMPSON. Yes.

Mr. HAMILTON. Let us come this way. I want to know whether the block that made this slipped or not.

Mr. THOMPSON. You have that point on that. The point on that is hidden in the dark shadow -- that the whole block slipped up so far that that slipped beyond the breech block entirely and that whatever made that there did not get a chance to operate on this.

Mr. HAMILTON. I will show a way the Court can determine that for himself independent of what I may say or think. I take first the Lowell shell and measure the distance from the center of the firing pin dent to the bottom of the primer.

Mr. THOMPSON. Now, I want you to show what that bottom is. I want you to show what made that big black space there.

Mr. HAMILTON. The bottom union where the primer meets the shell is found in that little white streak down through. As it goes around your eye will catch it easy enough. It is right in there. It is practically in the middle of the black streak. Now, you measure from that up to the center of the firing pin dent

on the Lowell No. 3, and these others I will give the figures so as to save time. It measures 1.30, $1 \frac{3}{10}$ of an inch. There it is, right there, 1.3 inches. Now, whether that block has moved up or not, assuming they are both in the same gun, I go over and measure the same thing on the Fraher and I find that on the Fraher, measuring from the bottom of the primer to the center, I have a distance of 1.40.

Mr. THOMPSON. Ten one-hundredths of an inch.

The COURT. Come back here and measure this one over again. Show me so that I will know where the center is.

Mr. HAMILTON. I was going to have you look at it.

The COURT. You might put that one and call it the center one, please. I might not get it the same way. On the same there as ---

Mr. HAMILTON. The center is the center of that white speckled area, that right where I am pointing. There is the center of that, those white spots. That is where the end of the firing pin hit, the extreme bottom of that dent on Lowell 3. Now, the distance from that point to the bottom of the primer on this Lowell 3 is 1.3. I go over and locate the same center as near as possible where I am pointing, measure to the bottom of the primer the same, and I find that 1.4. In other words, it is 10 one-hundredths of an inch higher up than it was on the Lowell.

Mr. THOMPSON. On the photographs?

Mr. HAMILTON. On the photographs.

Mr. THOMPSON. Now, what is the degree of magnification there?

Mr. HAMILTON. I would have to work that. The magnification would be 5.7 divided by the diameter of the shell. You

will have to measure the shell to get that.

Mr. THOMPSON. About 10 times?

Mr. HAMILTON. Well, it is a little over. I think it is approximately 11 on this.

Mr. THOMPSON. Eleven. That makes $1/11$ of $3/10$ of an inch. I want to get that.

The COURT. Here is something that struck me. There may not be anything in it. Whether this is not nearer the top than that?

Mr. THOMPSON. The whole thing, the whole dent is away down on the Lowells.

Mr. HAMILTON. He is measuring the edge of the flow back to the rim. You want the edge of the face that was hit or the edge of the primer itself. The primer goes clear to there, and not to here. That is the roll. The primer goes clear to there. That is it.

Mr. THOMPSON. That is in the center. The Fraher was struck in the center. All these test shells show the firing pin struck down below. That is one of the things already pointed out, the difference in position of the whole dent.

Mr. HAMILTON. I am now figuring how much, assuming it is all one pistol, how much this block had to change and move upward to get ---

The COURT. I see what you mean.

Mr. HAMILTON. --- to get this off from it. Now, I found that in the center of the block it had to go up to correspond to this photograph $1/10$ of an inch. Now, I take, on the assumption that all other spots move up with it, it being a solid block, I go over on the left hand side and measure from the union of the three lines making the inverted "Y", from the union of that to

the lower part of the primer, and I find that on the Lowell shell -- I have it the wrong way -- I measured to the top. Measuring from that point to the top, it is 1.25 -- 1 1/4 inches. From the union of the three sides, three parts of the "Y", in other words, its center apex to the top of the primer vertically up is 1.25. I go over on the Fraher shell and make the same measurement and find that the distance is 1.2. That is, the "Y" has only gone up 1/20 of an inch, whereas the center went up 1/10 of an inch. I then take the right hand side, the inverted "V" and measure from the apex to the top of the primer, and I find that distance is 1.25 on the Lowell shell. I go over and measure it upon the Fraher and I find its distance from the apex -- the inverted "V" -- to the top of the primer is .90. There, that side has gone up .35 of an inch. So that I find this arrangement, that in order to make these points on the Fraher correspond with the Lowell, I must move the right of the breech block up 5 one-hundredths, the center of the breech block 10 one-hundredths, and the right hand side of the breech block must go up 35 one-hundredths of an inch.

Mr. THOMPSON. On the scale of the photograph?

Mr. HAMILTON. On the scale of the photograph.

The COURT. Let me see those shells, the Fraher and the Lowell shells.

Mr. THOMPSON. What we are trying to show is we claim the presence of that mark there and its absence there is a mark of essential difference. They reply to us, "No, it isn't. You would find that mark there if this shell had been in a position to get struck by the end of the breech block that made it." We say that is impossible, -- the explanation doesn't explain.

The COURT. I want to see how these compare, striking in

the center.

Mr. THOMPSON. That is a different point. All the tests are off center, the Fraher pretty nearly in the center. By the way, I may say I have sent for the Burns shells, and I expect to have them here, and they also, I am told, are all off center. I haven't seen them. And I should like to suggest if anybody wants to fire one hundred Winchester cartridges in Sacco's pistol for the purpose of seeing whether or not it fires on the center or off center they are at liberty to do so, providing we are present at the test and see that the exhibits are taken care of afterwards. Does your Honor think of anything else? In other words, no rotation, no rotation of the shell would -- in a different circular position -- would accomplish the same purpose as did Mr. Hamilton.

Mr. HAMILTON. You can't rotate it.

The COURT. In other words, what I understand, Mr. Hamilton, is this: That breech block does not move.

Mr. THOMPSON. We are assuming now it did move. We say it doesn't.

The COURT. It would have to move.

Mr. THOMPSON. It would have to move, if you had these variances.

Mr. HAMILTON. With these variances the right side of the breech block must move upward 35 one-hundredths of an inch.

The COURT. So I understand.

Mr. HAMILTON. The left side must go up five one-hundredths of an inch, and the center 10 in order to make the breech block do on the Fraher shell what it has done on the Lowell shell.

Mr. THOMPSON. And being a rigid object you can't move one side more than the other.

The COURT. That is what I said. That is what I understood Mr. Hamilton to say.

Mr. HAMILTON. It cannot be rotated, because it travels on these tracks and cannot be rotated. Beside, if you rotate it it would throw the left side down to get the other one up.

Mr. THOMPSON. Then you would have still further differences in the appearance?

Mr. HAMILTON. Certainly. But it is mathematical. This isn't an opinion. It is mathematical; cannot be done.

Mr. THOMPSON. Now, go ahead and tell us what you mean by 23 percent off center.

Mr. HAMILTON. 23 percent off center is determined this way. I since worked it on them all. I measured on the Lowell shell.

Mr. THOMPSON. Now, look^{ing} at page 12 of your original album?

Mr. HAMILTON. Yes. I measure the distance between the lower edge of the firing pin dent to the bottom of the primer and on the Lowell shell 3 I think is the one I am measuring now, I found that distance 35 one-hundredths -- .35. The distance from the upper edge of the firing pin dent to the upper edge being .58. The sum of those two remains the same -- of those two zones is .93 of an inch. Divide that by 2, gives .465, or the distance that would be above and below the firing pin if it was exactly in the center.

Mr. THOMPSON. That is the radius, the diameter?

Mr. HAMILTON. That is the radius of that zone surrounding the firing pin.

Mr. THOMPSON. The half distance of the diameter.

Mr. HAMILTON. .465. The actual distance on this shell distance³⁵ The difference between .35 and .465 is .115, or the distance that that firing pin has struck down on that zone

That gives you the enumerator, and .465 gives you the denominator or a fraction of 1.5 divided by .465, which figured out in percentage gives the exact figures of 23.65 percent. I call it 23 as a coarse approximation. It is just a trifle over what I gave.

Mr. THOMPSON. Can you state that ratio, the ratio between what -- can you put that into English?

Mr. HAMILTON. That is the ratio that pin strikes below on the zone or it would strike if it was struck in the center. And I have since figured the Peters shells to determine those as well.

Mr. THOMPSON. Did you find the Peters off center by the same amount?

Mr. HAMILTON. They are off more than the Fraher or Lovell -- the Van Amburg. I will give you the exact figures.

Mr. THOMPSON. Though they look on the pictures, it is hard to tell whether they look off or not or how much off.

Mr. HAMILTON. I figured it by actual measurements, and I can tell you right here.

Mr. THOMPSON. The Peters are made of harder metal and they roll up and don't get flattened out by the compression against the breech block so it is harder to see what their relative position is in the photograph.

Mr. HAMILTON. Well, I can give it from memory. I have a memorandum of my actual figures, but the three Peters are all off center approximating 24, and one of them nearly 25 percent.

Mr. THOMPSON. Show the Court the Peters there now, your photographs of them. Show how harder it is to tell on the photographs.

Mr. HAMILTON. Those are the photographs. Now, in mak-

ing calculation, the Peters has to be revolved until the ejector mark is in the approximate location on the left just below the horizontal center and then the flow back comes a little on the down left, and the narrowest point is at the base. They all struck below center. Now, taking the middle one, P-2, revolving it around until the ejector mark comes up where it should be, the narrow -- I measured the narrow against the wide; and the same with P-3. I have my figures right here.

Mr. THOMPSON. Those are rolled and these are flattened out. These are the Winchester and these the Peters. These are more or less flattened, but that is harder metal and it doesn't get flattened.

Mr. HAMILTON. To my eye they look as though they were not much off center, but by the actual measurements in hundredths of an inch they figure, by the same rule that I did the Lowell shells, they are off center about one one-hundredth to one and one-half hundredths of an inch more than the Fraher. That difference to the eye is because of that roll of metal, whereas this is blown out flat nearly to the extreme edge of the primer.

Mr. THOMPSON. No matter if you cannot find the figures.

Mr. HAMILTON. I have them somewhere, though.

The COURT. Is there any difference between the Fraher and the other Winchesters fired at Lowell?

Mr. HAMILTON. Difference in what way?

The COURT. The same measurement. You just gave me here the Peters.

Mr. THOMPSON. He means off center.

The COURT. Off center.

Mr. HAMILTON. Yes, the Fraher figured by the same process,

I figured it last night.

Mr. THOMPSON. There is your Fraher.

Mr. HAMILTON. That is the Peters. That is 1. This is 4. This is almost microscopically exact center, horizontally east to west, but perpendicular it is, I think it is 4, or it is between 4 and 5 percent off center below instead of the right or left.

Mr. THOMPSON. Now, compare it with the others right and left. You don't need to look at it. Just show right there.

Mr. HAMILTON. Let me give it where they are in the position they should be. That is page 12, or 16 would be better. There is the ejector mark that always locates where that should be, because that is where it hits. Now, this Fraher is 5 percent by the same process I have enumerated below center, and measuring across it is as near actual center as could be had. In other words, just a fraction over 50. It is about 53 -- the zone to the right of the firing pin and to the left of the firing pin on the Fraher is about 53 one-hundredths of an inch.

Mr. THOMPSON. Now, the others.

Mr. HAMILTON. The other way -- I got my figures right here somewhere.

Mr. THOMPSON. No matter, they are plain enough.

Mr. HAMILTON. I want to give it exact.

The COURT. Why can't you figure them right here?

Mr. HAMILTON. I can.

The COURT. Quickly. Now, tell just what you are doing. I want the stenographers to take it down so I can do the same thing.

Mr. HAMILTON. I am now measuring ---

Mr. THOMPSON. Tell the page.

Mr. HAMILTON. On page 2 of the supplementary album -- from the bottom of the primer in the Fraher shell to the bottom of the firing pin dent.

Mr. THOMPSON. The center.

Mr. HAMILTON. No, the bottom.

Mr. THOMPSON. Oh, the bottom of it.

Mr. HAMILTON. That is, to the lower edge of the dent.

Mr. THOMPSON. Yes.

Mr. HAMILTON. Not the inside bottom, but the lower edge of it, and I find that distance to be about 82 one-hundredths of an inch. Measuring from the upper edge of the primer to the upper edge of the firing pin dent, I find that distance to be 95 one-hundredths. The figures I gave you were not right. It is hard to find where the edge of the firing pin dent is in the Fraher, on account of the ragged edge. Now, these are the figures I had last night. The lower distance should be .85; the upper distance should be .93. The total is 1.78, divided by 2 is .89 as the width of the zone above and below, but it is .85 below, which gives a difference of 4 or a fraction $4/89$. $4/89$ reduced to percentage gives a percentage of 4.84 one-hundredths percent off center downward.

Mr. THOMPSON. In the vertical line.

Mr. HAMILTON. That is right, vertically up and down, it is below center 4.8 percent. I said between 4 and 5, as I remember, last night.

Mr. THOMPSON. How much is it the other way?

Mr. HAMILTON. Well, the other way it is ---

Mr. THOMPSON. You said it was the same.

Mr. HAMILTON. It is 78 one-hundredths of an inch wide, the zones on the right and left side of the firing pin -- practically exact center.

Mr. THOMPSON. Now, take the Lowell and just give us how far out or how far off that is, Lowell 3. I hate to have you go through the time to make this computation here.

Mr. HAMILTON. It is plainer on this other one. That is taken with a different magnification. Here we are; I have already given that.

Mr. THOMPSON. Yes, you have already given that.

Mr. HAMILTON. That would be a repetition. I have given those figures, 23.65.

Mr. THOMPSON. That is a little way off center both in the horizontal and perpendicular lines.

Mr. HAMILTON. Yes, they are slightly off to the left, and decidedly off downward.

Mr. THOMPSON. That is what I say. They are off in the horizontal line to the left; decidedly off downward to the perpendicular.

Mr. HAMILTON. To the southwest. It would be south of southwest they are off center.

Mr. THOMPSON. I am only speaking as you look at the picture, The Fraher is all right in the horizontal line, same on both sides, and 4 percent in the vertical up and down.

Mr. HAMILTON. Exact vertical down.

Mr. THOMPSON. Down. Have you measured the other Lowells at all from these computations to see whether they differ?

Mr. HAMILTON. As I recall it I have computed it on all four Lowells, the three Van Amburg and the three Peters, and I have already given the measurements.

Mr. THOMPSON. Now, then, let us come to your -- will you show before you come to that, show on this breech block, on your picture of it here on page 12 of your original album ---

Mr. HAMILTON. --- the protuberance?

Mr. THOMPSON. The protuberance which made the hole.

Mr. HAMILTON. It is better to look right on the gun itself. The Court can see that easy.

Mr. THOMPSON. Which has made that dent which they say escaped when the Fraher was fired.

Mr. HAMILTON. Look right above. You hold the gun so that I can shade your eyes and take it below so your hand don't make a shadow. That is it. As you are looking now, it is right above the firing pin hole, a distance of about an eighth of an inch above the edge of the firing pin hole, a little scant of that, a little depression right down in. It is really a depression where the bushing is screwed into the block. That is the depression that corresponds and fits the elevation on the Lowell test shells, the Van Amburg test shells which have already been referred to.

Mr. THOMPSON. Now, the fact it is right on the edge there, does that make it possible to jump up so high on the Fraher it did not even make any mark at all?

Mr. HAMILTON. As a theory it could jump a certain distance provided all the rest of it jumped with it, but that could not jump up and the rest not jump up.

Mr. THOMPSON. No, that is true, all right. Well, even as a theory, with the pistol cocked is there any such possibility of jump as that?

Mr. HAMILTON. No, sir.

Mr. THOMPSON. All right. Now, I want to ---

The COURT. How far would it jump?

Mr. HAMILTON. I will have to compute that for your Honor. I can do that, though, just the possible -- I can compute for you in actual mechanical measurement here whether that can go a hundredth or five hundredths of an inch or just what it can do, only it will take some little time.

The COURT. Supposing you do that this afternoon.

Mr. HAMILTON. Pardon me, I would do it, but I have already another matter for examining exhibits in another murder case.

Mr. THOMPSON. Can you get it by tomorrow morning?

The COURT. That is what I said, tomorrow morning.

Mr. HAMILTON. For tomorrow morning?

The COURT. Yes. I am going to suspend at quarter of 1.

Mr. HAMILTON. What facilities would the Clerk give me to examine them tonight, if I was tied up? I should begin as soon as I get away from this court, and probably won't be through with that. It is over here in Hyde Park. As soon as I get through I will come right back here.

The COURT. All right.

Mr. THOMPSON. Will the clerk be here to give him the pistol?

Mr. HAMILTON. I don't want the pistol. I want it done in his presence. I will do it in his presence. I do not want the pistol.

The CLERK. One of us, I suppose, will be here.

The COURT. Somebody will be here. If they don't, give it to me later some time.

Mr. HAMILTON. I will get it for you before I leave.

The COURT. That is all I want.

Mr. HAMILTON. I may not be able to do it tonight, because I don't know how much I will be tied up there, but

I will leave the figures before I leave town because that can be done, that can be all worked out, you know. That is, whether it can or not, if it can I will give you -- get the figures for the court.

Mr. THOMPSON. Now, let us come to the important subject of these identifying, or these dissimilar marks, and the consideration of their claim of identifying marks. Brother Williams spoke about certain marks being marks being very important here. Perhaps before you begin that, he spoke of certain little machine marks, not file marks at all, around the end of the breech block on the bushing he regarded as of great importance.

Mr. HAMILTON. I know what you mean.

Mr. THOMPSON. Will you point those out?

Mr. HAMILTON. I will point them out. The Court can see for himself. I will just call attention to what they are. Looking as you did before, your Honor, at the face of the breech block bushing surrounding the firing pin and holding it as I am now holding it so you look over the top of the claw and through that hole, you look across the top of the firing pin hole and on the opposite edge of the hole the metal at its edge you will find, you will observe, I think, five little indentations like minute teeth marks at the very edge pointing right towards you. There will be three of them side by side beginning at your right. You will first see -- that is, I see, rather -- I don't know what you see -- I see a pair. Next to the pair, a small dent close to them, and then beyond the small dent another pair, a little further apart.

The COURT. How many do you see in all?

Mr. HAMILTON. Five.

Mr. THOMPSON. What are they, Mr. Hamilton?

Mr. HAMILTON. They are the remains of the screw machine in cutting off the bushing. The bushings are fed into the machine in the form of wire and as each one is made, it is cut off. After that is formed as a bushing, it is then cut off from the wire, and in the cutting off it leaves a collection of -- there, they show in this photograph on page 12 -- of all those little marks around there, due to the cutting off of the bushing. Now, what I have called the Court's attention to representing the breech block, photograph page 12, where I am now pointing, you are going to look through this opening over here, you look right across over the top of this. Pardon me, if I don't hold the light in the right place, let me know. Now, while you are still looking -- I have called attention to five. Those are large and prominent. Now, at the left of those there are a lot of little specks, spots, very minute, like a little flock of specks, and those can be seen on the photograph, page 12. Now, while you are still looking northeast from that spot on the photograph, and where you are looking, it will be -- further on to your left at -- where the bushing joins the breech block screwed in are a collection of four more little short parallel ones quite similar to the first ones I called your attention to.

The COURT. Now, let me see the shells and see what I see on those.

Mr. HAMILTON. Now, I am going to call your attention where to look on the shells -- what I had called attention to -- see those right there beginning with a pair. You can see with your naked eye. It begins with a pair. It begins with a pair

and goes up. Then comes a little faint one, then the two that make the second pair. This is the other one I called your attention to.

The COURT. Yes, that is the breech block.

Mr. HAMILTON. That is the edge of the breech block. Now, on the Lowell No. -- there is the first pair at the beginning. There is the little one. There is the second pair further apart. This speckled appearance is -- I call it the block. Up on the rim are the ends of the four, on the very edge; put that down. That is it, that gives you the right focus. Right up there. I find the same on Lowell 2, beginning with the pair, the little one and then the two adjoining. The corrosion of the primer does not permit them to be seen as clearly -- only the first part. I look on Lowell 1 and I find they begin again with a pair, close together, and the little 1 and then the two a little further apart, and the flock. Now, going to the Fraher shell, I find there it begins with a single one, then a pair, then another pair, then one, then a flock of five larger plainer to be seen than the minute flock on the test shell.

The COURT. Wait a minute, please.

Mr. HAMILTON. That is it, right there. Get the focus way down. There is the one. This makes a "V." First the one, then the pair making a letter "V."

Mr. THOMPSON. That is the appearance as the machine marks on the pistol that fired the Fraher registered themselves differently on that from the machine marks that fired the test shell?

Mr. HAMILTON. Yes, sir. And I should have said also on

the Fraher, the ones up on the margin caused by -- on the north-east, none there appear at all.

Mr. THOMPSON. Is there a black spot there, mark or cavity immediately above the center of the firing pin on this photograph which made a rectangular elevation in the Lowell test and did not make any in the Fraher?

Mr. HAMILTON. Well, that is already here.

Mr. THOMPSON. That is already pointed out.

Mr. HAMILTON. That shows on page 12.

Mr. THOMPSON. All right. Now, then, I want you to go ahead and take the general area northeast of the indentation on the Lowell and Fraher in the neighborhood of the inverted "V", first point to the Fraher, to the right of the line of the inverted "V" how many lines there are.

The COURT. How long will it take you to complete this subject?

Mr. THOMPSON. It would take a good while. This is very important, this part of the work.

The COURT. Tomorrow morning, 10 o'clock.

(Adjourned to Thursday, November 8, 1923, at 10 a. m.)

